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No. 765

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IN THE

SUPREME COURT OF THE UNITED STATES

LESLIE E. JETT,
Petitioner,
VS.
UNITED STATES OF AMERICA,
Respondent.

PETITION FOR WRIT OF CERTIORARI

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PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

To the Honorable, the Chief Justice, and the Associate Justices of The Supreme Court of the United States:

The petitioner, Leslie E. Jett, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit, entered in Cause No. 16,105 of that Court on October 26, 1965.

OPINION BELOW

The opinion of the Court of Appeals for the Sixth Circuit has not been generally reported, but a copy thereof is appended to this petition.

STATEMENT OF JURISDICTION

The United States District Court for the Middle District of Tennessee, Nashville Division, entered judgments of conviction on July 14, 1964, against the petitioner on charges of willful evasion of payment of income taxes for the years 1960 and 1961, and of willfully filing a false income tax return for the year 1961. The United States Court of Appeals for the Sixth Circuit affirmed these judgments of conviction on October 26, 1965.

Jurisdiction to entertain this petition is conferred on the Supreme Court of the United States by 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Are donations made to candidates for political office *per se* taxable to the extent they are applied to the personal expenses of the candidate?

2. If so, was the taxability of such "diverted" funds sufficiently clear prior to the decision in *James v. United States*, 366 U.S. 213 (1961), to permit a finding that a taxpayer who failed to report such funds in his 1960 tax return acted with willful intent to evade the payment of taxes?

3. In a tax evasion prosecution, can a finding of willfulness be sustained if the only evidence offered to show willfulness consists of an uncorroborated exculpatory statement of the accused, allegedly made to a Revenue agent several months after the alleged offenses occurred, if such statement is used inferentially, as circumstantial evidence of guilty knowledge and intent?

4. In a tax evasion prosecution, can the Government prove the defendant's knowledge of the taxability of unreported receipts by introducing in evidence extra-judicial statements allegedly made by the defendant four to sixteen months after his tax returns were filed, such statements being offered as circumstantial evidence that the defendant knew at the time he made the statements, and hence, at the time he filed his returns, that the receipts he failed to report were taxable?

5. When a defendant in a tax evasion prosecution relies upon the defense of advice of counsel to negative willfulness, must he prove that he revealed all legally relevant facts to his counsel, or only that he revealed those facts which he in good faith believed to be relevant?

STATUTES INVOLVED

26 U.S.C. §7201. Attempt to evade or defeat tax.

> Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000.00, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

26 U.S.C. §7206 (1). Fraud and false statements.

> Any person who—
>
> (1) Declaration under penalties of perjury.—Willfully makes and subscribes

> any return, statement, or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter;
>
> . . . .
>
> Shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned not more than 3 years, or both, together with the costs of prosecution.

STATEMENT OF THE CASE

The petitioner (hereinafter called "defendant") was the Sheriff of Davidson County, Tennessee, during the tax years in question. He was charged in a five count indictment with willfully attempting to evade payment of income taxes for the years 1960 and 1961 (26 U.S.C. 7201), and with willfully subscribing to false statements regarding his adjusted gross income in tax returns filed by him in 1960, 1961, and 1962 (26 U.S.C. 7206). Counts one and three charged him with tax evasion for the years 1960 and 1961, and counts two, four, and five charged him with perjury for the years 1960, 1961, and 1962. The Government attempted to prove counts one and three by the "net worth and expenditures" method, and counts two, four, and five, by the "specific item" method. The court, sitting without a jury, convicted him of counts one, three, and four, and acquitted him of counts two and five (86a).

The Government identified the specific items alleged to have been omitted from the defendant's 1960 tax return, as follows: $1,000.00 given to defendant by a Paul Shelton during his 1960 campaign for Sheriff of Davidson County; $500.00 given to defendant by an Ernest Jones during the 1960 campaign; two payments of approximately $400.00 each alleged to have been given the defendant by law violators as "protection money" (84a). The Government asserted that the Shelton and Jones payments were made in order to obtain personal favors from the defendant. The defendant admitted receipt of these payments, but stated that his lawyer had advised him during his 1960 campaign that payments received by him from political supporters were nontaxable gifts. He denied receipt of either of the two alleged payoffs from law violators. The court found that the government had failed to sustain its burden as to any of these items, and acquitted the defendant of count two (84a).

The government identified the specific item alleged to have been omitted from the defendant's 1961 tax return as a payment of $500.00 made to the defendant around Christmas of 1961 by the same Ernest Jones referred to in Count Two (84a-86a). The government made the same assertion with respect to this payment: that it was a payment made in order to secure a personal favor from the defendant. The alleged favor was the continuation of Jones' contract to supply oil and gas to the Davidson County sheriff's patrol. There was no evidence that the defendant and Jones had ever discussed this contract. There was evidence that the contract was continued on the basis of merit, and that the defendant played no direct role

in the decision to continue it (23a; 55a-60a). The defendant testified that he had regarded this payment in the same light as the 1960 Jones payment—as a non-taxable political gift (65a-66a). The court rejected this testimony, and convicted the defendant of count four (85a).

Under count five, the government attempted to prove that the defendant had failed to report on his 1962 tax return income derived from a partnership called the "Capitol City Chemical Company." The court found no evidence that the defendant received any income from this entity in 1962, and acquitted him of count five (85a).

Although counts one and three were based upon a "net worth" theory of computation, they became for all practical purposes specific item counts, because the defendant's net worth deficiency for 1960 and 1961 was substantially accounted for by evidence of specific unreported receipts. These receipts were in the form of political and personal donations received by the defendant from various persons during his campaign for Sheriff of Davidson County and during his first year in office as Sheriff.

The government asserted that a substantial portion of the funds received by the defendant during his 1960 campaign were taxable because the defendant had used them for personal, rather than campaign, expenses. These donations were made personally to the defendant during the course of his campaign. Many of the donors testified that they attached no conditions to them as to use. Some assumed the monies would be used in the campaign. The defendant admitted, both in interviews with the government and

during the trial, that after the 1960 campaign was over, he deposited the unspent remainder of these donations in a personal savings account (54a). He testified that he had not reported any portion of these donations in his 1960 tax return, because he had been advised by his lawyer that they were nontaxable gifts (64a). The government asserted that these donations were taxable to the extent they were "diverted" to defendant's personal use, that the defendant's deposit of the unspent remainder of the donations was such a diversion, and thus his failure to report the funds thus diverted was a willful attempt to evade payment of taxes. The court apparently accepted these assertions, and convicted the defendant of count one (83a-84a).

The government also asserted that some of these unreported receipts—in particular, the Jones and Shelton payments asserted as specific items under counts two and four of the indictment—were taxable as graft payments. The court acquitted the defendant as to the Shelton payment and the 1960 Jones payment, but convicted him as to the 1961 Jones payment.

The court's finding that the Jones payment was willfully omitted from the defendant's 1961 tax return applied to both count three, the tax evasion count, and to count four, the specific item—perjury count. The defendant was convicted of count three as well as count four.

In affirming the defendant's convictions the Court of Appeals held: (1) That the campaign donations received by Jett in 1960 were taxable to the extent they were "diverted" to his personal use; (2) That the 1961 Ernest Jones payment was taxable; and (3) That the Government introduced sufficient independ-

ent evidence of willfulness to sustain the convictions.* The Court found that the following items of evidence constituted substantial independent evidence of willfulness:

a. Allegedly inconsistent statements made by the defendant to Revenue Agent John Mask during investigatory interviews in 1962. (Mask testified that the defendant told him during his first interview that he

*The opinion of the Court of Appeals contains several factual inaccuracies, which we feel should be corrected for the sake of the record.

1. On pages 3 and 4 of the opinion, the following statement appears:

> [W]hen confronted with the Government's net worth calculations and the necessity of showing receipt of nontaxable income to account for the increases in net worth, he furnished the Government with a list of other alleged contributors.

The petitioner was never confronted with the Government's net worth calculations during the investigation of the case and this clearly appears from the record. (See, e.g., 79a.)

2. On page 7 of its opinion, the Court of Appeals refers to the case of *O'Dwyer v. Commissioner* as a Seventh Circuit case. In fact, it is a Fourth Circuit case.

3. On page 7 of its opinion, the Court states that, according to the Government's figures, there was an understatement of income for the year 1961 of about $6,547.39. In fact, Government Exhibit B, which is appended to the Court's opinion, reflects an understatement of $5,966.42. Apparently, the figure stated by the Court is a combination of the Government's reported taxable income figure for 1961 of $6,547.97 and the "cents" portion of the Government's corrected taxable income figure for 1961 which is $12,514.39. Also, the Court failed to deduct a $1,123.30 expenditure for boat repairs, which was included in the Government's figures, but which the Court found should "be eliminated from the calculations" for lack of proof. See page 5 of opinion.

4. On page 8 of its opinion, the Court made the following statement: "Even if the evidence were insufficient to support counts one and two. . . ." Since the defendant was acquitted of count two in the trial court and convicted of count three, we are certain that the Court of Appeals intended to say "Even if the evidence were insufficient to support counts one and three. . . ."

had received only one gift during the tax years in question (28a). At a later interview, the defendant furnished Mask with a list of other gifts, including the Five Hundred Dollars ($500.00) from Ernest Jones in 1961. In his own testimony, the defendant stated that he reported receipts to Mask as he remembered them from time to time during the various interviews, and that Mask was aware that the receipts were being reported in a piecemeal fashion (69a, 70a). There was no apparent reason why the defendant should reveal a gift in the amount of One Thousand Dollars ($1,000.00) during his first interview, and intentionally conceal other similar gifts in smaller amounts; nor was there any change in circumstances between the first interview and the second interview which would justify an inference that the defendant felt compelled to reveal receipts during the second interview which he had deliberately concealed during the first interview.)

b. The fact that there was an understatement of income for both tax years, even after the gifts and campaign contributions were deducted from the net worth computations; and

c. The fact that no political campaign was conducted in 1961.

The Court of Appeals discounted the defendant's asserted reliance upon advice of counsel, because the Court felt that the evidence justified a finding that the defendant did not tell his counsel "that he was using any of the funds for personal use." (Opinion, p. 6.) The Court held that "Jett would have no right to rely on the advice of an attorney unless he made full disclosure of the *pertinent* facts." (Opinion, p.b.) By this, the Court apparently meant that the defend-

ant was required to reveal all legally relevant facts, regardless of whether he actually knew or believed that such facts were relevant. Certainly, there was no evidence in the record that either the defendant or his counsel actually believed that the use to which the funds were put was relevant to their taxability.

REASONS FOR GRANTING WRIT

1. *Taxability of Campaign Donations.*

This Court has never ruled upon the taxability of donations made to candidates for political office. We submit that the Court should do so now, for the following reasons.

a. The taxability of campaign donations is of vital concern to the thousands of taxpayers who have been or will be candidates for political office in this country. Many of the affected taxpayers are now holding political office at municipal, state and national levels. Under the rule of taxability applied in this case, many of these officials may now or hereafter be subject to prosecution for income tax evasion.[1] It is of extreme importance to the general public, as well as to the affected taxpayers, that the taxability of political donations be clarified, and that a nationally uniform principle of taxability be adopted.

b. The rule of taxability applied in this case, and in the case of *O'Dwyer v. Commissioner of Internal Revenue*, 266 F2d 575 (4th Cir. 1959), is basically unsound. This rule is as follows:

> Where a political gift is received by an individual or a political organization and it is held or used

[1]The recent prosecution of former Governor William G. Stratton, in the Northern District Court of Illinois, is a dramatic case in point.

> for the purposes intended, i.e., for present or future expenses of a political campaign or for some similar purpose, it is not taxable income to the recipient. See I. T. 3276, *supra*. However, any amount diverted from the channel of campaign activities and used by a candidate or other individual for personal use constitutes taxable income to such candidate or other individual for the year in which the funds are so diverted.
>
> *O'Dwyer v. Commissioner of Internal Revenue*, 266 F2d 575, 585, n. 4, quoting *Rev. Rul. 54-80*, 1954—1. Cum. Bull. 11.

The only explanation given for this rule is that:

> Contributions to political organizations are *customarily* made with the intent and understanding that they be used for the expenses of a political campaign or for some similar purpose. (Emphasis added.)
>
> *Ibid.*

The implication is that political contributions are "customarily" gifts in trust, to be used solely for campaign purposes, and that a use of such donations for personal expenses is a breach of trust, which renders the funds so used taxable, on the same basis as embezzled funds. *C.f. James v. United States*, 366 U.S. 213 (1961). This is a very broad assumption. In some cases, an implied trust relationship may exist between donor and candidate. In many cases—particularly when the donation is made directly to a candidate by a personal acquaintance—a trust relationship obviously does not exist. Even if it could be said that a trust relationship "customarily" exists, the broad rule of Revenue Ruling 54-80 would still be unjustified. If political donations used for personal expenses are to be

taxed on a theory of breach of trust, the Government should be required to prove the existence of a trust relationship with respect to each individual donation. Taxability should depend upon actual, specific intent; not upon "customary" intent.

This Court has previously rejected broad, presumptive rules of taxability, based upon "customary experience." In *Duberstein v. Commissioner of Internal Revenue*, 363 U.S. 278 (1960), the Government urged the Court to adopt several presumptive rules regarding the taxability of transfers alleged to be gifts. The Court emphatically rejected this request, stating:

> We think, to the extent they are correct, that these propositions are not principles of law but rather maxims of experience that the tribunals which have tried the facts of cases in this area have enunciated in explaining their factual determinations. Some of them simply represent truisms: it doubtless is, statistically speaking, the exceptional payment by an employer to an employee that amounts to a gift. Others are overstatements of possible evidentiary inferences relevant to a factual determination on the totality of circumstances in the case: it is doubtless relevant to the overall inference that the transferor treats a payment as a business deduction, or that the transferor is a corporate entity. But these inferences cannot be stated in absolute terms.
>
> 363 U.S. at 287.

The rule of taxability applied in the instant case elevates a questionable "maxim of experience"—i.e., "Donations made to political candidates are customarily gifts in trust to be used only for campaign purposes"—to the status of a rule of law—i.e., "Donations made to political candidates are gifts in trust

and are taxable to the extent they are used for non-campaign purposes." The Government made little attempt to establish the intent of the parties at the time the various donations were made to the defendant, and no attempt to establish specific express or implied trust relationships. In holding that the donations were *per se* taxable to the extent they were used for personal expenditures, the District and Circuit Courts, in effect, presumed the existence of trust relationships without any evidence thereof. We submit that these holdings, and the presumptions on which they were necessarily based, are contrary to the principle of the *Duberstein* case, and should not be permitted to stand.

2. *The Finding that the Defendant Acted Willfully in Failing to Report "Diverted" Political Donations in His 1960 Return Is Contrary to the Decision in James v. United States.*

If the political donations received by the defendant in 1960 are taxable, they are taxable on the theory that (1) they were received in trust, and (2) the defendant committed a breach of trust when he "diverted" them to his own use. In *Commissioner v. Wilcox*, 327 U.S. 404 (1946), this Court held that funds obtained by breach of trust are not taxable. *Wilcox* was still the law when the present defendant filed his 1960 tax return, on April 6, 1961. On May 15, 1961, *Wilcox* was reversed by the decision in *James v. United States*, 366 U.S. 213 (1961). In the *James* case, the Court held that, although embezzled funds are taxable, the defendant could not be convicted of willful tax evasion, because *Wilcox* was still in effect at the time he filed his tax return:

> We believe that the element of willfulness *could* not be proven in a criminal prosecution for failing

> to include embezzled funds in gross income in the year of misappropriation so long as the statute contained the gloss placed upon it by *Wilcox* at the time the alleged crime was committed (Emphasis added).
>
> 366 U.S. 213, 221, 222.

We submit, on the basis of the *James* holding, that the present defendant could not be convicted of willfulness for failing to include "diverted" campaign donations in his 1960 tax return. Either he had a right to apply these donations to his personal expenses, in which case they were unconditional, nontaxable gifts; or he did not have a right to do so, in which case he was guilty of a breach of trust. If he was guilty of a breach of trust, he was in precisely the same position as the defendant in the *James* case, and his conviction on count one of the indictment is in direct conflict with the *James* holding.

3. *Inferential Use of the Defendant's Uncorroborated Extra-Judicial Statement to Establish Willfulness.*

Willfulness is, of course, an essential element of the offense of tax evasion, and must be proven by substantial evidence, independent of the mere understatement of income. *James v. United States*, 366 U.S. 213 (1961); *Holland v. United States*, 348 U.S. 121 (1954). Since it is an essential element of the offense, it cannot be proven solely by uncorroborated exculpatory statements of the accused. *Opper v. United States*, 348 U.S. 84 (1959). The requirement of corroboration extends to the crime of tax evasion, even though "there is no tangible injury which can be isolated as a *corpus delicti*." *Smith v. United States*, 348 U.S. 147, 154 (1954); *Sansone v. United States*, 334 F2d 287 (8th Cir. 1964).

The only independent evidence of willfulness introduced in this case was the testimony of Revenue Agent John Mask, regarding inconsistent statements allegedly made by the defendant during investigatory interviews. The trial court virtually admitted that this was the only evidence of willfulness in the record. During final argument, one of the defense lawyers stated that no evidence of willfulness had been introduced. The Court stated:

> THE COURT: "Of course, you know what the Government relies on to show willfulness."
> MR. WILLIS: "The amount of the deficiency?"
> THE COURT: "No. Allegedly inconsistent statements that he made about these gifts from time to time on these different interviews."
> (76a).

The Court of Appeals could find no other evidence of willfulness, except the fact that there was an understatement of income for both years (which was not "independent" evidence of willfulness) and the fact that there was no political campaign in 1961 (which seems irrelevant, since the defendant did not claim his 1961 receipts were campaign contributions). Mask's testimony regarding the defendant's extra-judicial statements was wholly uncorroborated. We therefore submit that it was insufficient, under the holding in the *Opper* case, to establish the essential element of willfulness.

If the statements testified to by Mask had been in the form of direct admissions, the need for corroboration would be obvious. See *Sansone v. United States, supra.* (Involving a defendant's extra-judicial admission that he was aware of an unreported tax liability at the time he filed his tax return; the Eighth Circuit Court required and found corroborating

evidence of a "truly substantial nature.") The present defendant's extra-judicial statements were not used directly, however, but inferentially, as circumstantial evidence of a guilty mind: from the defendant's alleged initial reluctance to reveal the 1961 gift from Ernest Jones, the Government sought to infer that the defendant was aware that this gift was taxable, and that he had intentionally omitted it from his 1961 tax return. The question presented, therefore, is whether the requirement of corroboration should apply to extra-judicial statements of the accused which are used as circumstantial evidence of facts in issue, as well as to admissions by the defendant, which are used as direct evidence of the facts admitted. We submit that it clearly should.

Extra-judicial confessions are considered inherently untrustworthy, and have traditionally required corroboration. *Wigmore, Evidence*, §2071 (3rd Ed.). *Opper v. United States, supra.*, extended the corroboration requirement to exculpatory admissions, on the ground that:

> Given when the accused is under suspicion, they become questionable just as testimony by witnesses to other extra-judicial statements of the accused.
>
> 348 U.S. at 92.

Exculpatory admissions are felt to be "questionable" because an individual under investigation is likely to trap himself into making untrustworthy statements, through his desire to cooperate or his fear of prosecution:

> In many cases of this type, the prosecution relies on the taxpayer's statements, made to revenue agents in the course of their investigation, to

> establish vital links in the Government's proof. But when a revenue agent confronts the taxpayer with an apparent deficiency, the latter may be more concerned with a quick settlement than an honest search for the truth. Moreover, the prosecution may pick and choose from the taxpayer's statement, relying on the favorable portion and throwing aside that which does not bolster its position. The problem of corroboration, dealt with in the companion cases of *Smith v. United States, infra,* and *United States v. Calderon,* p. 202, therefore becomes crucial.
>
> *Holland v. United States,*
> 348 U.S. 128, 129 (1954).

See, also, *Smith v. United States,* 348 U. S. 147, 153 (1954); and *United States v. Calderon,* 348 U.S. 160, 164 (1954).

The danger that an accused may be unfairly trapped during an investigatory interview is greatly increased if his statements are later used against him circumstantially, rather than directly. At the time he makes such statements, he may be totally unaware of the inferences that will be drawn from them when they are reproduced at trial. The inferences may be mistaken and capable of being explained; but, being unaware of them, the accused may lose his chance to explain them to the agent. This is especially true of allegedly inconsistent statements, which are as likely to be the result of faulty memory, confusion, or fear, as of a deliberate intent to conceal evidence of guilt.

We therefore submit that the requirement of corroboration should be expressly extended to include circumstantial, as well as direct, use of extra-judicial statements. If this were done, the convictions in the present case—which rest solely upon such evidence—would fall.

4. The Use of Post-Offense Statements of the Accused for the Purpose of Showing Knowledge of the Accused at the Time of the Offense.

There is a serious question as to whether Mask's testimony can be given any weight whatever, insofar as it was offered to show the defendant's knowledge of an unreported tax liability. The Government claimed that the defendant falsely told Mask in July, 1962, that he had received only one gift during the tax years in question, and that this was evidence that the defendant knew that the Jones gift, which he failed to reveal, was unreported taxable income. If the defendant knowingly made a false statement of this kind, he thereby committed a separate offense, for which he could have been separately indicted and tried. See *Beacon Brass Company v. United States*, 344 U.S. 43 (1952). Thus, the Government introduced evidence of an alleged subsequent offense (deliberate false statement to a revenue agent in July, 1962) for the purpose of proving the state of the defendant's knowledge at the time of alleged prior offenses (tax evasion in April of 1961 and 1962).

There is a conflict among the Circuits as to whether evidence of a subsequent offense may be introduced for the purpose of showing the defendant's knowledge at the time of the offense for which he was indicted. The Sixth Circuit Court has previously approved such practice. See *Emmich v. United States*, 298 Fed. 5, 9 (6th Cir. 1924); and *United States v. Northern*, 329 F2d 794, 795 (6th Cir. 1964). The Sixth Circuit's position is apparently supported by a *dictum* in the Third Circuit case of *United States v. Prince*, 264 F2d 850, 852, n. 1 (3rd Cir. 1959).

Where evidence of similar acts or conduct is al-

> lowed to show knowledge, willfulness and intent as in this instance, the fact that they occurred subsequent to the crime named in the indictment is no bar to admissibility of the evidence.

Other Circuit Courts have taken a contrary view, holding that evidence of subsequent offenses is inadmissible for the purpose of proving knowledge at the time of a prior offense. In *Witters v. United States*, 106 F2d 837 (D.C. Cir. 1939), the defendant had been convicted of selling stolen bicycles. The trial court had admitted evidence that the defendant had made similar sales subsequent to the sale for which he was indicted. This evidence had been admitted for the purpose of showing the defendant's knowledge that the bicycles he was indicted for selling were stolen. The Circuit Court reversed his conviction, holding that:

> [O]ne cannot have knowledge of a fact at a certain time through some happening or occurrence that may take place in the future. . . . [T]he admission of the evidence of subsequent offenses for the purpose of showing prior knowledge was fatally prejudicial and necessitates a reversal of the judgment.
>
> *Witters v. United States*, 106 F2d 837, 840 (D.C. Cir. 1939)

In accord with this holding are *III Wigmore, Evidence* §316; *Hubby v. United States*, 150 F2d 165 (5th Cir. 1945); *Roe v. United States*, 316 F2d 617, 621 (5th Cir. 1963); and *Rodriguez v. United States*, 232 F2d 819 (5th Cir. 1956). See, also, *Anthony v. United States*, 256 F2d 50 (9th Cir. 1958), in which the Court recognized the *Witters* principle, but did not apply it, because the subsequent offense occurred less than half

an hour after the offense for which the defendant was indicted.

The instant case graphically illustrates the importance of resolving the above conflict. Two factors commonly present in tax evasion cases conjoin in this case. First, this prosecution was based almost entirely upon information derived from the defendant during investigatory interviews. Secondly, the defendant's knowledge of an unreported tax liability was a central issue in this case, as it has been in many recent tax evasion cases. See, e.g., *James v. United States*, 366 U.S. 213 (1961); *Ingram v. United States*, 360 U.S. 672 (1959); *Sansone v. United States*, 334 F2d 287 (8th Cir. 1964); and *Edwards v. United States*, 334 F2d 360 (5th Cir. 1964). The conjunction of these two factors emphasizes the importance of determining whether statements made during investigatory interviews can be used as circumstantial evidence that the defendant had knowledge of an unreported tax liability at the time he filed his return. We submit that this question should be decided in the negative, and that the Sixth Circuit Court holdings in this regard should be brought into conformity with those of the Fifth, Ninth, and District of Columbia Circuits.

5. *Advice of Counsel; Failure to Disclose all Legally Relevant Facts*

The Court of Appeals discounted the defendant's asserted reliance upon advice of counsel, on the theory that the defendant "would have no right to rely on the advice of an attorney unless he made full disclosure of the pertinent facts." The "pertinent facts" referred to were the defendant's use of political donations for personal expenditures. Such use was un-

doubtedly legally pertinent according to rule of the *O'Dwyer* case. It is, however, quite evident that neither the defendant nor his counsel was aware of the *O'Dwyer* rule at the time the legal advice was given. (34a-38a; 78a; 80a). The *O'Dwyer* rule is an extraordinary principle of taxation. It is apparently the only existent rule of taxability that determines the taxability of receipts by the use to which they are put.[2] There is no basis in the record for a finding that Jett actually knew or believed that his personal use of these funds was relevant to their taxability, and we do not understand that either the trial or Appellate Court felt that such a finding was justified. The Court of Appeals apparently held that the defendant was required to reveal all legally pertinent facts to his lawyer, regardless of whether he knew or believed they were pertinent.

This is an extraordinary and we submit, obviously incorrect holding. "Willfulness" involves actual awareness of the existence of a tax liability. If a defendant shows a lack of such awareness, by virtue of reliance upon advice of counsel, it should make no difference whether the lawyer who gives the opinion was aware of all of the legally pertinent facts. It should matter only that the defendant revealed all facts: (1) That he believed to be pertinent; and (2) that the lawyer inquired about. The defendant should be required only to show actual reliance upon advice of counsel,

[2]The difficulties created by this rule are reflected in the statements made by Senator Everett Dirksen during the Trial of William G. Stratton. This testimony is reproduced in its entirety in the Supplemental Appendix filed by the defendant in the Court of Appeals. The Court of Appeals refused to consider Senator Dirksen's statements, but we believe that they are proper subjects of judicial notice, and request that this Court consider them. C.f. *Brown v. Board of Education*, 347 U.S. 483, 493-96 (ns. 10 and 11) (1954).

not professionally intelligent reliance, or even reasonable reliance. *cf. James v. United States*, 366 U.S. 213, 246 (1961) (Separate opinion):

> "[D]istinctions in terms of the nature of the defendant's legal misapprehension its degree, its justifiability, or its source are [not] warranted. . . ."

Advice of counsel is one of the few clear-cut defenses available to defendants in tax evasion cases. It is often the only, or best, means of distinguishing an honest tax payer from a criminal. The holding in this case, that a defendant has "no right to rely on the advice of an attorney unless he [makes] full disclosure of the [legalty] pertinent facts," seriously impairs this vital defense, and in effect, erases the distinction between civil and criminal tax liability.

The present holding raises the same standard-of-guilt issue raised in *James v. United States*, *supra*, and it is objectional for the same reasons the *James* conviction was objectionable. We submit that there is no issue connected with tax evasion prosecutions that is more deserving of this Court's attention than the defense of advice of counsel. If the Circuit Court's holding on this issue is permitted to stand in its present unclarified form, much confusion will be generated regarding the standard of guilt in tax evasion cases, and the right of defendants to have their moral capability determined beyond reasonable doubt will, in many cases, be seriously impaired.

CONCLUSION

Petitioner prays that he be granted a review of his conviction on writ or certiorari; that the said con-

viction be reversed; and that the petitioner be discharged, or in the alternative, granted a new trial.

Respectfully submitted,

HOOKER, HOOKER & WILLIS

Attorneys for Petitioner
214 Union Street
Nashville, Tennessee

No. 16105

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA, *Plaintiff-Appellee,* v. LESLIE E. JETT, *Defendant-Appellant.*	APPEAL from the United States District Court for the Middle District of Tennessee, Nashville Division.

Decided October 26, 1965.

Before WEICK, Chief Judge, MILLER and EDWARDS, Circuit Judges.

WEICK, Chief Judge. Appellant Jett has appealed from a judgment of conviction on three counts of a five count indictment charging him with violation of the income tax laws. Trial by jury was waived and the case was tried by the District Judge. Findings of fact were also waived.

Counts 1 and 3 of the indictment charged Jett with income tax evasion for the calendar years 1960 and 1961, respectively, in violation of 26 U.S.C. § 7201. The method of proof with respect to these two counts was by net worth. Counts 2, 4 and 5 charged Jett with filing false returns for the calendar years 1960, 1961 and 1962, in violation of 26 U.S.C. § 7206(1). The method of proof of these three counts was by specific items omitted from his income tax returns.

The District Court found the defendant guilty on counts 1, 3 and 4 and not guilty on counts 2 and 5. Count 2 involved specific items of alleged graft. The

Court had a lingering doubt of guilt concerning count 2 because of conflicting evidence and the reputation of some of the parties. Count 5 involved specific items of income allegedly received from a partnership. With respect to this count the Court found that although Jett was a silent partner, the evidence did not disclose the amount of income received. He sentenced the defendant to eighteen months' imprisonment on counts 1, 3 and 4, to run concurrently.

The principal point raised on appeal was that the District Court erred in denying defendant's motion for judgment of acquittal. In considering this issue we must view the evidence together with inferences properly deducible therefrom, in the light most favorable to the Government and determine whether the judgment of conviction is supported by substantial evidence. *Ross* v. *United States*, 197 F.2d 660 (6th Cir. 1952); *Battjes* v. *United States*, 172 F.2d 1 (6th Cir. 1949).

Jett won nomination for the office of sheriff of Davidson County, Tennessee, at the primary election held on March 31, 1960. He was elected sheriff at the general election and took office on September 1, 1960. The increases in his net worth occurred during the political campaign and the tenure of his office.

In 1960 Jett reported taxable income of $1,212.43. The Government's computation of taxable income revealed that he received taxable income for that year of $9,175.75, resulting in an understatement of $7,963.32. For 1961 his reported taxable income was $6,547.97. His actual income as computed by the Government was $12,514.39 and the understatement was $5,966.42. The Government's net worth determi-

nations and computations of taxable income appear in Appendices A and B.

There was no dispute as to the assets and liabilities shown in the Government's net worth determination of taxable income except as to an item of $200 for a horse, which was inconsequential. Jett disputed the following items shown in the computation of taxable income under "Personal Expenditures":

Support of mother-in-law	(1961)	$ 750.00
Payments to W. E. Belcher	(1960)	700.00
Repairs on boat (Hargrave)	(1961)	1,123.30

These disputed items will be considered later.

Jett further disputed the likely sources of income asserted by the Government involving alleged gifts made to him during the political campaign and after he became sheriff, which gifts he either used to pay for living expenses or deposited in his wife's savings account from time to time. These were not included in his income tax returns. The Government also claimed that he received graft or pay-offs.

Jett was interviewed by Special Agents of the Internal Revenue Service on at least three occasions in 1962. He was questioned concerning his assets, liabilities, and income. Special Agent Mask, who was in charge of the investigation, testified as to conditions in Davidson County and Nashville which existed prior to Jett's election and continued under his administration. Wide open gambling was being conducted in the area and sales of intoxicating beverages by the glass were made, all in violation of Tennessee laws. Mask further testified on cross-examination by Jett's counsel as to hearsay evidence of pay-offs to Jett.

Mask testified that in his initial interview with Jett on July 14, 1962, Jett told him that Paul Shelton

had made a cash gift to him in 1960 for living expenses in the amount of $1,000. Shelton had been employed as a patrolman by Jett's predecessor in office. When Jett took office he not only retained Shelton but promoted him over the offices of corporal and sergeant to lieutenant. Jett did not include the $1,000-item in his 1960 income tax return.

Jett further told Mask that except for the Shelton payment he received no additional gifts in 1960 and 1961. Later, when confronted with the Government's net worth calculations and the necessity of showing receipt of nontaxable income to account for the increases in net worth, he furnished the Government with a list of other alleged contributors. Appendix C, prepared by the Government, contains the list of personal gifts claimed by Jett and the extent to which the Government claims he made proof of them at the trial. It lists campaign contributions paid direct to Jett, campaign contributions paid to Jett's campaign treasurer, and other payments to Jett. The government interviewed each available person shown on the list and subpoenaed such person to testify at the trial.

Appendix C lists Ernest Jones as making two gifts of five hundred dollars each to Jett, both of which were made in cash. The first alleged gift was made during the campaign in 1960 and the second was made at Christmas in 1961. Jones was the supplier of gasoline and oil for the automobiles in the sheriff's patrol. He testified that the reason he made the gifts was so that he might retain the oil and gasoline business.

The item of seven hundred fifty dollars shown for the support of the mother-in-law in 1961 did not involve cash. Rather, it consisted of the value of vegetables on the verge of spoiling, which a supplier of the

county permitted Jett to take without charge therefore, each week, and which were delivered to the mother-in-law by Mrs. Jett.

Relative to the item of seven hundred dollars, representing payments to W. E. Belcher, there was evidence tending to prove that prior to Jett's election as Sheriff he was Civilian Defense Director; that he sold a generator belonging to the Government to Belcher for two hundred dollars; and that after becoming sheriff, Jett endeavored to secure the return of the generator so that he could place it back in inventory, but that Belcher wanted sven hundred dollars for it. Jett gave Belcher two hundred dollars and the generator was returned to him. Later Belcher demanded the balance of five hundred dollars, which was sent to him by Jett.

Jett's version of the transaction was that he merely loaned the generator to Belcher, who gave him the two hundred dollars as a guaranty that he would return it on demand; that he left the two hundred dollars in his desk in the Civilian Defense office; and that he paid the additional five hundred dollars to Belcher to compensate him for services which he rendered Jett during the campaign.

On cross-examination Belcher testified:

> "Q And Sheriff Jett gave you five hundred dollars for working for him in that campaign, did he not?
>
> "A Well, he said we would call it that. He said he felt like he owed me something."

With reference to the boat, there was evidence that Jett was using the boat frequently and wanted to purchase it in the name of another person. There was no evidence that he paid for the repairs on the

boat in the amount of $1,123.30. The item should therefore be eliminated from the calculations with respect to personal expenditures.

In our opinion there was substantial evidence to support the conviction on counts 1 and 3 of the indictment. Even if Jett were allowed credit for all disputed items, there still remained a substantial understatement of income for the years 1960 and 1961.

Jett claimed that in not reporting the gifts which he used for living expenses or deposited in his wife's savings account, he relied on the advice of his attorney, Charles C. Morrow. Mr. Morrow was a classmate of Jett in law school. He saw Jett in the hotel where the campaign headquarters were located, and while in the hall was asked by Jett whether campaign donations were taxable. Morrow stated that he would look into the matter and later advised Jett that gifts to assist in his political campaign were not taxable income.

Upon being questioned by the Court, Morrow stated that there was no discussion with Jett about using campaign money for personal expenses. He did not recall that Jett told him that he was using any of the funds for personal use.

Jett testified that he told the lawyer he was using the money for his own personal use and was living off it. Since the testimony of Morrow conflicted with that of Jett, the District Court could, as he obviously did, resolve the conflict by crediting Morrow over Jett.

We are certain that Morrow, upon investigating the law, could have found no legal support for Jett's claim that funds contributed to a political campaign and diverted for personal use, were nontaxable.

Furthermore, Jett would have no right to rely on

the advice of an attorney unless he made full disclosure of the pertinent facts. *United States* v. *Baldwin*, 307 F.2d 577 (7th Cir. 1962). Jett did not make such disclosure.

Jett further contended that the Government failed to prove willfulness. He urged that he believed that the gifts and campaign contributions were not taxable. He stated that the law on this subject was not established until the case of *O'Dwyer* v. *Commissioner*, 266 F.2d 575 (4th Cir. 1959) was decided, which was only one year before his campaign.

The law was established long before *O'Dwyer*. *Paschen* v. *United States*, 70 F.2d 491, 500 (7th Cir. 1934); *Reichert* v. *Commissioner*, 19 T.C. 1027 (1953) aff'd on other grounds 214 F.2d 19, cert. denied 348 U.S. 909.

In 1939 there was in effect Revenue Ruling I.T. 3276, reported in 1939-1 Cum. Bull. 108, which held that:

> "[A] political gift received by an individual or by a political organization is not taxable to the recipient."

In 1954 another Revenue Ruling was adopted holding that campaign funds which are diverted and used for personal use, constitute taxable income. Rev. Rul. 54-80, 1954-1 Cum. Bull. 1. This later ruling modified I.T. 3276 to the extent that it was inconsistent. We agree with the Seventh Circuit in *O'Dwyer* that these two revenue rulings are not necessarily inconsistent and that the later ruling was declaratory of judicial interpretation of existing law. I.T. 3276 does not hold that the personal use of campaign contributions resulted in no tax liability. Jett could not have relied on I.T. 3276 in 1961 when he filed his 1960 income

tax return because Rev. Rul. 54-80, 1954-1 Cum. Bull. 11 supplanted it in 1954. The later ruling was thus in force for about seven years prior to the filing of Jett's 1960 return.

Since the statutes penalize the willful attempt to evade income taxes, proof of a willful purpose to evade the tax is necessary and an actual bona fide misconception of the law will not result in criminal liability. *Battjes* v. *Unted States*, 172 F.2d (6th Cir. 1949).

Bearing on the subject of willfulness, the District Court had the right to consider the inconsistent statements given by Jett to the Special Agents, the consistent understating of income in substantial amounts for both of the tax years, the fact that understatements exist even if the alleged gifts and campaign contributions received by Jett were eliminated from the computations, the fact that no campaign was conducted in 1961, and the fact that there was an understatement for that year of about $6,547.39. Jett's auditor arrived at a figure of $3,191.12.

In our judgment there was substantial evidence of willfulness.

Count 4 was a specific item charge which covered the alleged gift at Christmas in 1961 of five hundred dollars to Jett by Jones, who was the supplier of gas and oil. There was no campaign in progress at that time. Jones testified that he made the gift in order to retain the gas and oil business. The following year when Jones lost the business because the new Metropolitan Government assumed the functions of the sheriff's patrol, Jones made a gift at Christmas to Jett of wine glasses, costing about fifteen dollars. The District Court did not err in treating this item of five

hundred dollars as taxable income.

The sentences on all three counts were to be served concurrently and were for less than could have been imposed on one count. Even if the evidence were insufficient to support counts 1 and 2 (which it was not) we would still be required to affirm the judgment because no error exists with respect to count 4.

Hirabayashi v. *United States*, 320 U.S. 81, 85 (1943).

We find no prejudicial error in the record.

Affirmed.

Government's Exhibit 83

Appendix A

GOVERNMENT'S EXHIBIT 83.

Leslie E. and Marie Jett
Net Worth Determination of Taxable Income

	December 31		
Assets	1959	1960	1961
Cash on Hand	$ -0-	$ -0-	$ -0-
Savings Account—Mrs. Jett	401.43	2,167.11	6,067.45
Loan Receivable—Warren Jett	—	2,000.00	—
Residence—2400 Eastland Ave.	13,300.00	13,300.00	13,300.00
Household furnishings	5,915.23	8,713.52	8,713.65
Autos	2,339.00	4,662.76	4,662.76
Horse	—	200.00	200.00
Total Assets	$21,955.66	$31,043.39	$32,943.86
Liabilities			
Notes Payable—Furniture	$ 297.83	$ 1,998.29	$ 361.84
Loans Payable	-0-	3,400.00	-0-
Mortgage Payable	12,166.89	11,900.14	11,621.15
Total Liabilities	$12,464.72	$17,298.43	$11,982.99
Net Worth	9,490.94	13,744.96	20,960.87
Prior Year's Net Worth		9,490.94	13,744.96
Increase in Net Worth		$ 4,254.02	$ 7,215.91

Government's Exhibit 84

Appendix B

GOVERNMENT'S EXHIBIT 84.

Leslie E. and Marie Jett
Computation of Taxable Income

	1960	1961
Increase in net worth	$ 4,254.02	$ 7,215.91
Add Personal Expenditures:		
Election qualifying fee	2,161.30	—
Payroll deductions	894.59	2,311.20
Pasture rent	45.00	110.00
Payments to Mrs. Bissinger	550.00	900.00
Payments to Dave Pomeroy	—	200.00
Payments to clothing stores	1,126.75	1,322.65
Support of mother-in-law	—	750.00
Auto tag and licenses	—	17.50
Payments to W. E. Belcher	700.00	—
Home insurance, taxes & interest	760.76	769.51
Interest paid to 1st American Nat'l Bk.	189.96	23.40
Other living expenses	3,472.93	4,021.21
Repairs on boat (Hargrove)	—	1,123.30
Less:		
Income tax refund	(220.52)	(324.92)
Sale of old clothes and stove	—	(300.00)
Gain on trade of auto	(33.96)	—
Itemized deductions	(1,725.07)	—
Personal exemptions	(3,000.00)	(3,600.00)
Corrected Taxable Income	$ 9,175.75	$12,514.39
Less: Reported taxable income	1,212.43	6,547.97
Understatement of Taxable Income	$ 7,963.32	$ 5,966.42

Government's Exhibit 82

Appendix C

GOVERNMENT'S EXHIBIT 82.

Payments to Defendant—1960

	Personal Gifts to Jett Per Jett	Proved	Campaign Contributions Pd. to Jett	Pd. to Others	Other Payments to Jett
Dr. R. C. Patterson	$ 15.00	-0-	$ 15.00	$	$
Fred Robinson	500.00	-0-	500.00		
Allen-Bean	25.00	-0-	25.00		
Cecil Collins	100.00	-0-	100.00		
Silliman Evans, Jr.	250.00				
Ernest Jones	500.00	-0-			500.00
Ralph Hicks	50.00	-0-	?		
Gene Hester	100.00	-0-		100.00	
J. P. Brown	50.00	-0-	50.00		
Eagle Cleaners	100.00	-0-		100.00	
Boots Vaughan	100.00	-0-	100.00		
Paul Shelton	1,000.00	-0-			1,000.00
Crescent Am. Co.	250.00	-0-	200.00		
Mrs. Maud Robinson	250.00	-0-	-0-		
Phillips-Robinson Co.	250.00	-0-	200.00		
A. H. Johnson	500.00	-0-	500.00		
Herbert Jones	500.00	-0-		1,000.00	
Ernest Jones	500.00	-0-			500.00
Donelson Fire Dept.	100.00	-0-	-0-		
Joywood Fire Dept.	100.00	-0-	25.00		
Bracey-Welch Co.	100.00	-0-	-0-	-0-	-0-
Bill Johnson	50.00				
Gene Hill	50.00	-0-	-0-	-0-	-0-
Al King	100.00	-0-	100.00		
John I. Harris	100.00	-0-			
Ray McClard	50.00	-0-		100.00	
Dr. W. F. Fessey	200.00				
Arthur Burnett	100.00	-0-	-0-		
Johnny Beazley	100.00	-0-	?		
J. L. Perry, Jr.	150.00	-0-	____	100.00	____
Total	$6,240.00	-0-			

Office-Supreme Court, U.S.
FILED
NOV 2 4 1965
JOHN F. DAVIS, CLERK

No. 765

IN THE

SUPREME COURT OF THE UNITED STATES

LESLIE E. JETT,
Petitioner,
VS.
UNITED STATES OF AMERICA,
Respondent.

EXHIBIT TO
PETITION FOR WRIT OF CERTIORARI

JOHN JAY HOOKER, JR.,
WILLIAM R. WILLIS, JR.,
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McQUIDDY PRINTING CO., NASHVILLE, TENN.

EXHIBIT

TESTIMONY OF
SENATOR EVERETT McKINLEY DIRKSEN
IN THE CASE OF
United States of America vs. William G. Stratton.

In the United States District Court,
Northern District of Illinois,
Eastern Division.

United States of America,
Plaintiff,

vs.

No. 64 CR 221.

William G. Stratton,
Defendant.

Before Judge Will and a Jury.
Friday, March 5, 1965,
10:00 o'clock a. m.

Trial resumed pursuant to adjournment.

Present:

Mr. J. Crowley,
Mr. Russo,
Mr. Koplan;
Mr. G. Crowley,
Mr. Barnett,
Mr. Emanuelson.

7561* **EVERETT McKINLEY DIRKSEN,**

called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

The Witness: May we have some water?

The Court: Mr. Crowley, John Crowley is getting it.

---

* Page numbers refer to testimony of Senator Everett McKinley Dirksen taken at the trial of the case of United States of America vs. William G. Stratton.

Mr. George Crowley: Oh, all right.

The Court: No, Senator, that is just for the recording device.

The Witness: Oh, I see.

The Court: The acoustics are sufficiently good so that you will be easily heard without any amplification, I am sure.

The Witness: Thank you, your Honor.

Direct Examination,

By Mr. Barnett:

Q. Will you state your name, please?

A. Everett McKinley Dirksen.

Q. What is your position, sir?

A. A member of the United States Senate.

Q. From the State of Illinois?

7562 A. That is correct.

Q. Senator, will you tell us something about your background, where you were born, and your education, and your political background?

A. I was born, grew up and was educated in my native city, Pekin, Illinois. I did my undergraduate work at the University of Minnesota. I spent two years in the United States Army in World War I.

I returned and engaged in various lines of business.

Subsequently I was elected to the City Council in my home city. Thereafter I became a candidate for the Congress of the United States. I was defeated in a primary in 1930. I was nominated and elected in 1932. I served in the House of Representatives without interruption for eight consecutive terms.

7563 I developed coronary trouble which they thought was malignant. I retired from Congress on my own volition.

Subsequently I was urged to become a candidate for the United States Senate in 1950. I was nominated and

elected, and I am presently serving in the third year of the third term in the United States Senate.

So, I have spent most of my adult life in the Capitol city as a Congressman or as a member of the United States Senate.

Q. Senator, will you tell us what committees you served on and any chairmanships you held while a member of Congress and the House of Representatives?

A. I served on a great many committees, Insular Affairs, Banking, Territories, the District of Columbia, and I apprehend there were a good many others. But my main work in the House was on the House Appropriations Committee. I served as chairman of the Comimttee on the District of Columbia and thereby became the unofficial mayor of Washington for a period of two years. But the burden of my work was in the Appropriations and
7564 the Budget field.

Q. Senator, will you tell us what committees you have served on in the Senate, as well as any chairmanships you have held?

A. I have served on the Senate Judiciary Committee, and presently do, as the ranking minority member of that committee.

I have served on the Senate Banking Committee. I served on the Senate Appropriations Committee. I am now in my fourth term as the Minority Leader of the Senate.

I also serve presently on the Senate Finance Committee, which is the opposite number to the Revenue Committee in the House, namely, the Ways and Means Committee.

Q. What is the name of that last committee?

A. The Ways and Means Committee.

Q. And what is the name of the counterpart in the Senate?

A. The Senate Finance Committee.

Q. Now, is one of the functions of the House Ways and Means Committee to write tax laws of the United States?

A. Yes, anything that appertains to taxation
7565 must, in fact, under the constitution, originate in the House of Representatives, and begins with the Committee on Ways and Means.

7566 Q. And after the Congress has initiated a bill, what is the action of the Senate in respect to it?

A. The Senate, of course, can amend any tax bill that comes over. It can modify it in any particular whatsoever. But it does require the concurrence of both Houses finally, through the apparatus of the Conference Committee, before you reach agreement, and before it goes to the President either for signature or for disapproval.

Q. Now, Senator, are you familiar with the political machinery of the Democratic party and the Republican party in the State of Illinois?

A. Well, let me say that after more than thirty years, I have what might be called a reasonable familiarity with these processes and operations.

Q. Will you describe the differences in the parties to us insofar as their political strength is concerned and the leadership of the party?

Mr. John Crowley: I am going to object, Your Honor. I think this is clearly irrelevant.

7567 The Court: What is the relevancy or materiality of the relative strengths of the two political parties which, as I recall it, have shifted from time to time in the State of Illinois, to the issues in this case?

Mr. Barnett: Well——

The Court: I am going to sustain the objection.

By Mr. Barnett:

Q. Senator, will you tell us with respect to the Republican party where the general strength lies and where the leadership of the Republican party comes from in the State of Illinois?

Mr. John Crowley: I will object to that again, your Honor. I don't see the relevancy to this case.

Mr. Barnett: The relevancy, your Honor, is connected with the Governor of the State, when he is a Republican, being a political leader, as well as an official of the State.

Mr. John Crowley: I don't see the relative——

7568 The Court: Well, I think the purpose that you have just defined is much narrower than the question which you asked. I am going to sustain the objection to that question. I understand the relevance of the explanation which you gave, but the question was much broader than that. The question asked for the structure of leadership—structure and leadership of the Republican party in the State of Illinois. If you want to ask the Senator what the role of a govenor is in the Republican party, that is a specific question which I take it he can answer.

Mr. Barnett: I will be satisfied with that question, your Honor.

Senator, will you answer the Court's question?

By the Witness:

A. Generally speaking, I think the parties conform to a regular pattern. You have at the very bottom, and most——

Mr. John Crowley: Pardon me, Senator.

7569 Your Honor, I believe Mr. Barnett asked the Senator to answer the Court's question, and I don't think this is answering the Court's question.

The Court: Yes.

I think, Senator, that what Mr. Barnett and I agreed upon, at least, was that the proper question was what is the role of the Governor in the Republican party in the State of Illinois?

By the Witness:

A. In its simplest terms, the Governer is the leader of his party in the State.

By Mr. Barnett:

Q. Now, is that any different in the Republican party than in the Democratic party?

Mr. John Crowley: Objection, your Honor.

The Court: Yes, sustained.

By Mr. Barnett:

Q. Well, what duties are required of a Republican governor as the leader of his party in the state?

7570 A. The duties are manifold, to say the least. As a party leader, he has an interest in all of the party machinery, and that begins at the precinct level and goes up through the State Central Committee, consisting of one committeeman from each of the committee or congressional districts in the State.

Obviously, where other state officers fit into the general pattern, he has certain responsibility for leadership there also.

If there are other intermediate organizations, like an association of county chairmen, manifestly, he has an interest there.

And he is constantly counseling wherever he can with all of these organizations and affiliated groups for general party purposes.

7571 Q. Senator, do you know whether it is necessary or desirable for a political leader, such as a Republican governor of Illinois, to receive funds to enable him to carry out his obligations as a party leader?

Mr. John Crowley: I will object to that question. It calls for a conclusion of the witness.

The Court: Yes.

This, I take it, is an opinion of an expert. Overruled.

By the Witness:

A. Well, let me answer, if I may, in the very broadest sense, I have never yet found a substitute for money in a political field, I must say, and obviously in carrying on the work of a political organization and in projecting

an image for one or more candidates, it requires communication with your people, communications being through newspapers, by means of radio, by means of television, by means of public appearances of all kinds, whether in a ceremonial or in an administrative capacity. Obviously it requires funds to carry on these activities.

7572 By Mr. Barnett:

Q. Are you acquainted with Governor William G. Stratton?

A. Let me say that I have known him man and boy, since he was fourteen years old.

Q. And what has been your association with him?

A. It has been a very close association, particularly over the latter years, but if I recall correctly I first met him in company with his father, who was a candidate for state office, when he appeared in my home city of Pekin.

I think at that time he may have been twelve, thirteen or fourteen years of age.

Q. And have you been acquainted with his career since then?

A. I have been rather intimately acquainted with his career and to a very considerable extent I think I have been identified with his career.

Q. And are you familiar with his work as Governor of the State of Illinois?

A. I rather think so.

Q. And as a political leader and a Governor, how did you consider him?

7573 Mr. John Crowley: Your Honor, I will object to the relevancy of this.

The Court: Are we talking about did he think he was a good governor or bad governor?

Sustained.

Mr. Barnett: Talking about whether he was effective or not, your Honor.

The Court: Sustained.

7574 Mr. Barnett:

Q. Well, in his position as governor, are you acquainted with the activities that he carried on as governor?

A. First of all, I would be naturally familiar with his work as an administrator of the affairs of the state and everything that comes within the jurisdiction of the governor, because he is, after all, your Number One man, and therefore the administrator of the state affairs, and secondly, I am quite familiar with his activities in the realm of what I might call the state's official ambassador with its relationship with other states and organizations beyond the jurisdiction of the state; thirdly, I think I am familiar with his ceremonial activities of which there are so very many, and obviously places the governor in a rather unique position as distinguished from so many other positions in public service.

Q. Do you know what position the Governor held with respect to the Governors' Conferences?

A. Yes. I draw on memory, of course, but I recall
7575 that he was chairman of the Governors' Conference on one occasion. I don't know what the length of his tenure was. I think out of that came his chairmanship as a chairman of the so-called compact—Oil Compact Commission. I think he was on a number of very important committees that were functioning under the structure of the Governors' Conference, and that probably included the so-called Council of State Governments which was set up well over 30 years ago, and as I recall has its headquarters here in Chicago.

Q. Now, Senator, are you acquainted with Governor Stratton's activities as a political campaigner and party leader?

A. Very much so.

Q. Will you tell us what you know of his activities as a campaigner?

A. Well, I can only——

Mr. John Crowley: Pardon me, Senator.

I just wonder if he could fix a time as to the campaign.

Mr. Barnett: Throughout his life.

The Court: But I think the Senator can identify
7576 particular campaigns by years, which would be helpful in understanding the import of the testimony.

By the Witness:

A. I would have to draw entirely on recollection. As to his first campaign—and I have forgotten whether that was for State Treasurer or whether he ran for congressman-at-large, but I know it was a great many years ago, and insofar as that campaign had any identity with the old 16th Congressional District based on Peoria, which I represented in the Congress, while I not only campaigned with him, but I saw a great deal of him at that time.

And in connection with his campaign for State Treasurer, I have to rely on memory again here, but I think I campaigned in a good many portions of the state at that time, along with the general caravan that the party set up for that purpose, so that through all his elections, and there could have been as many as fifteen or sixteen primary and general elections, I had some identity more or less with virtually every one of them.

7577 Q. Would you consider him a successful campaigner?

A. Well——

Mr. John Crowley: I object to that. I don't see the relevancy, really.

The Court: No. Overruled.

You may answer, Senator.

By the Witness:

A. I think the record speaks for itself, and I think he was quite successful.

By Mr. Barnett:

Q. Are you acquainted with the demands which are made upon a governor, Republican governor, of the State of Illinois in his capacity as a political leader of the state?

A. Yes, sir.

Q. Will you tell us what type of demands those are?

A. Well, he was probably under a great deal more demand than one in my position as a legislator at the national level because as he goes about the state people readily identify him, of course, as the number one man in the state, they identify the Governor's lady as
7578 the First Lady of the State, and our people do make many demands upon them, and if I had to particularize I think in terms of the contributions and the donations that you are called upon to make, not merely to party organizations as such, which could be a precinct organization or a ward club, but for charitable purposes, for religious purposes, and nearly every other activity that would come into mind.

Q. Are you acquainted with the type of demands that are made upon the Governor in his capacity as Governor as an official of the state?

A. Well, let me say——

Mr. John Crowley: Your Honor, I think that question has been asked and answered.

Mr. Barnett: I just asked about political leader.

Mr. John Crowley: I think he asked about governor first.

Mr. Barnett: I asked a Republican governor of the state in his capacity as political leader.

By the Witness:

A. Well, it is rather difficult to distinguish
7579 where these demands fall; namely, whether they are made in his capacity as Governor or as political leader or because of his ceremonial responsibility in the state, and it is a little difficult to distinguish.

I can distinguish in my own case, I suppose, but I know the demands that are made upon me and have been ever since I have been in public service.

7580 By Mr. Barnett:

Q. Do you know anything about the requirement for the Governor to be available by telephone or other means to constituents or members of the official family of state?

A. I assume that governors differ, but I must say that Governor Stratton has been available and accessible by telephone day and night, certainly to me, ever since I can remember.

I would assume from conversations——

Mr. John Crowley: Then, Senator, I will enter an objection as to the assumption.

The Court: I think that is objectionable, what the witness assumes from conversations with others.

Sustained.

By Mr. Barnett:

Q. Have you had occasion to confer with the Governor by telephone at odd hours of the day or night?

A. Many times.

Q. As a legislator and a political campaigner, are you
7581 familiar with federal laws regulating the soliciting of political contributions by candidates for state office and federal laws pertaining to the taxability of such political contributions?

Mr. John Crowley: Your Honor, I will object to that question. I think——

The Court: He just asked whether he was familiar. Overruled.

Are you familiar, Senator, with these various laws that have been enumerated?

By the Witness:

A. I am quite familiar, of course, with the federal laws because I have been filing under the Federal Corrupt

Practices Act, and the forms required under that Act, ever since I took the Oath of Office as a member of the Congress.

Now, of course, it applies only to members of the United States Senate, representatives in Congress, delegates from the territories, and so forth. It has no immediate application to any state official as such.

By Mr. Barnett:

Q. Do you know whether there are any laws in
7582 the State of Illinois regulating contributions to officers or candidates for state office for the State of Illinois?

A. Insofar as I know, no.

Q. Now, Senator, are there any laws of Congress which attach taxability to political contributions?

Mr. John Crowley: Your Honor, I am going to object to this. Now we are going into an area of expertise and legal interpretation.

I think this is beyond the scope of this witness. Although a great legislator, I don't believe he is qualified to answer this question.

Mr. Barnett: I certainly think his status on the Senate Finance Committee qualifies him, your Honor.

The Court: As it pertains to the Internal Revenue Code?

Mr. Barnett: Yes, sir.

The Court: Senator, do you consider yourself an expert on the Internal Revenue Code?

The Witness: No, sir, your Honor.

7583 By Mr. Barnett:

Q. Senator, do you consider yourself an expert as to whether or not political contributions are taxable?

Mr. John Crowley: I will object.

The Court: No. I think that is a more restricted question. Overruled.

Mr. John Crowley: I will withdraw the objection to that.

The Court: All right.

By the Witness:

A. I think so, because I have had occasion to examine into it more than casually over a long period of years.

By Mr. Barnett:

Q. Senator, has Congress ever expressed an intent to tax political contributions?

Mr. John Crowley: I object to that, your Honor.

The Court: Has Congress ever expressed—I am going to sustain the objection to that. That is a broad question which calls for a conclusion with respect to the action of the Congress.

7584 Sustained.

By Mr. Barnett:

Q. Has Congress passed any legislation taxing political contributions?

Mr. John Crowley: Objection, your Honor.

The Court: Overruled. That is a specific question.

By the Witness:

A. As such, no.

By Mr. Barnett:

Q. Senator, where a candidate for office has received political contributions personally himself, in your opinion does he have any obligation to include such contributions in income on his federal tax returns?

A. If they are contributions and the Federal Corrupt Practices Act specifically uses the word contribution, the answer is no, they are not included.

Q. Now, in your opinion would this be true regardless of what use to which he put those contributions?

Mr. John Crowley: No, I won't object, your Honor.

7585 By the Witness:

A. Well, I think it is a matter of the donative intent of the contributor and if he places no restriction on it, then, of course, the donee or the recipient of the con-

tribution is free to use it as he sees fit, and that, of course, is a matter of individual judgment.

Q. With respect to taxability, is the donee under those circumstances in your opinion ever required to include any part of a political contribution on his income tax return?

Mr. John Crowley: I will object, your Honor. I think the witness answered.

The Court: I think that question is ambiguous, Mr. Barnett. You said under those circumstances, and I don't know what circumstances you are talking about. He talked about two circumstances. He talked about campaign contributions, which I take it are one type of contribution, and unrestricted gifts, which I take it are
7586 another contribution.

If you want to ask him whether under either of these circumstances it is taxable income, then I think we can understand what you are talking about.

I will sustain the objection.

7587 By Mr. Barnett:

Q. Where a candidate receives a contribution from a supporter, is there any requirement with respect to how he uses that money?

A. By requirement I would assume you mean a ruling or a regulation or an interpretation of existing law.

There could be such rulings, of course, by the Internal Revenue Service, but I know of nothing in existing law with respect to an interpretation that very specifically puts a restriction on him as to how he uses it once the contribution or the gift has been made for that purpose.

Q. Now, in your opinion, Senator, as a campaigner, who should be the judge with respect to how a political contribution is used?

Mr. John Crowley: I will object to that question, your Honor. The form of the question is bad.

The Court: Yes. Sustained.

By Mr. Barnett:

Q. Senator, you mentioned that a man in office such as governor or senator is besieged by requests
7588 for donations, perhaps prizes and things like that, from various organizations.

Is he normally able to meet these requests out of his salary in public office?

Mr. John Crowley: I will object to that, your Honor. It is leading. If anyone doesn't need to be lead, it is Senator Dirksen.

The Court: Sustained, Mr. Barnett.

Mr. Barnett: I beg your pardon?

The Court: I sustained the objection. It certainly is a leading question.

By Mr. Barnett:

Q. Senator, you referred to requests prior to this time. Is the salary of a public official sufficient to meet the demands financially made upon a man in the position of governor or senator?

Mr. Crowley: Same objection, your Honor.

The Court: Same ruling.

By Mr. Barnett:

Q. Senator, with respect to the demands that are made upon a man in public office, how does he normally meet those demands?

7589 Mr. John Crowley: Object to that, your Honor.

The Court: Overruled.

Mr. John Crowley: The phraseology, how he meets it.

The Court: If there is a norm the Senator can state it. If there isn't, he can state to the contrary.

Overruled.

By the Witness:

A. It is wholly a matter of judgment and capacity, and if counsel will permit, I can only say that I got rather curious about the demands on myself over a period of

time, and we clocked them for a period of about six months, and generally speaking they ran at the rate of roughly a hundred dollars a day. Those are all forms of demands, for political purposes, for non-political purposes, contributions where a church burned down or where a church wanted a new pipe organ or where they wanted to send a girls' basketball game to a league performance out east somewhere, and they are as varied as human activity.

7590 So we just lumped them all together and they ran at the rate of a hundred dollars a day.

Well, manifestly that would exceed your entire salary and how would you meet it unless you had sustaining funds out of which you could take care of it?

So you have to become very selective about meeting demands of that kind.

Q. And from where are such funds obtained?

A. Well, there are helpful contributions from those who recognize the difficulty that public service interposes for you, and you undertake to use such funds, if you can, for that purpose.

7591 Q. Now, these funds that are given to you from helpful supporters, do you consider those to be taxable or non-taxable?

A. Perhaps I ought to make one distinction, and that is it is a matter of individual judgment in every case, I suppose, as to how they are used and whether they are used unequivocally, but human judgment, being what it is, you can segregate it one way or another or you can put it in a lump sum and use it freely for all the purposes that come along, seeking, of course, to identify them as something that advances your political cause, your political ambitions and your political future.

Q. Incidentally, Senator, is the campaign of an officeholder limited to the period of time between his announcement and his election?

Mr. John Crowley: Your Honor, I am going to object.

Mr. Barnett is constantly leading the witness. I think this is a leading question.

Mr. Barnett: I will rephrase it, your Honor.

The Court: All right.

7592 By Mr. Barnett:

Q. What is the period of campaign with respect to a politician?

A. If I may venture the speculation, the federal government, I think, recognizes that once you are in public office there is something of a presumption that you are always a candidate, and as Thomas Jefferson once described, "In office few die and none resign."

Q. Now, Senator, there has been testimony in this trial that while Governor Stratton was in office as Governor, in addition to residing, as required by the Constitution, in the Mansion House at Springfield, he maintained a home in Morris, Illinois, and voted from that residence, and there is testimony that he prepared rooms in that house for his security guard when traveling in that area, and that his mother maintained open house at this residence to receive callers at least part of every day, and that he maintained an office in that home and that he used it as—that he used the home as an election night headquarters.

Would you regard the rehabilitation and upkeep of that home while he was in office as a personal or a political expense?

7593 Mr. John Crowley: I am going to object to this question. I don't think there is any basis for it.

The Witness: Where is the waterboy?

The Court: Would you get the Senator some water?

Mr. John Crowley: I have some for him right here.

The Witness: Thank you.

The Court: You are not asking for a tax opinion from the Senator; you are asking for a political opinion?

Mr. Barnett: That is right.

The Court: Overruled.

By the Witness:

A. Your home becomes a political center, whether you like it or not, and mine has been so long that I haven't known anything differently for over 30 years, except for that period when added responsibilities as Minority Leader of the Senate has virtually immobilized me in Washington, but when there was opportunity for me to be back here, your home was a scene of constant conferences and
7594 delegations day after day and night after night.

You always receive election returns there. That was the place where you received most of your telephone calls. It was the base of your operations.

I presume in all good judgment if one wanted to consider it as such, he could easily do so and sustain a case for himself.

By Mr. Barnett:

Q. Do I take it then, Senator, that your answer is that it could be considered a political expense?

Mr. John Crowley: I will object, your Honor.

The Court: Sustained. The witness has answered.
7595 By Mr. Barnett:

Q. Senator, there has been testimony in this trial that John Doctoroff, a famous artist, made an oil portrait of William G. Stratton, and that the portrait was reproduced and lithographed in his campaign for election in 1956——

Mr. John Crowley: Your Honor, I will object now even before Mr. Barnett has finished the question, because I see what the question is. It relates to the Doctoroff painting, which has no relevance here. We haven't charged it as an expenditure, and it doesn't enter into the computation of the taxable income here at all.

Mr. Barnett: Your Honor, if the Doctoroff painting has no relevance here, I don't know what it is doing in the case.

The Court: It was in the case to show expenditure prior to the tax period, wasn't it?

7596 Mr. John Crowley: No.

The Court: No, just to show expenditures in excess of——

Mr. John Crowley: It was paid by a campaign check, as a matter of fact.

The Court: It was paid out of the Oak Park Bank account.

Mr. Barnett: Then I don't understand what it was for, your Honor, because it wasn't paid out of the Stratton individual account. I don't understand.

The Court: Well, Mr. Barnett, if I understand the facts with respect to it, it was paid out of a check drawn on the campaign account. The government has not charged it as income to the defendant, so I don't see what relevance there is to the question.

Mr. Barnett: Well, I don't understand what it is in the case for then.

Mr. John Crowley: Your Honor, I am going to object to Mr. Barnett's comments.

The Court: Sustained.

7597 Mr. Barnett: Well, may I finish the question, at any rate, your Honor, for the record?

The Court: All right.

By Mr. Barnett:

Q. Senator—if I may repeat the question, your Honor—there has been testimony in this trial that John Doctoroff, a famous artist, made an oil portrait of William G. Stratton, and that the portrait was reproduced and lithographed in his campaign for election in 1956.

In your opinion, would the expenditure for such a portrait be considered a personal or a political expense?

Mr. John Crowley: Same objection.

The Court: Same ruling. Sustained.

By Mr. Barnett:

Q. Senator, in your campaign, have you ever had a portrait painted?

Mr. John Crowley: Objection, your Honor. I think it is irrelevant.

The Court: It is irrelevant. I agree. Sustained.

7598 The '56 expenditures, Mr. Barnett, as you well know, are not being charged as income to the defendant. We are dealing only with the years '57, '58, '59 and '60.

Mr. Barnett: Well, then, your Honor, I don't understand what it is in the case for.

The Court: Well, if you don't understand, I won't try to explain it again. I think I understand. It was part of the demonstration of no cash on hand at the outset of '57.

Mr. Barnett: Exactly, paid for not out of his funds, but out of the political campaign fund.

Mr. John Crowley: Your Honor, there is another reason why it is in the case, because it was and it is a net worth item that was constant through the period, and the government must include every net worth item in its net worth schedule.

7599 The Court: All right, that is the second reason why it is in the case, as I understand.

Mr. Barnett: Your Honor, what about the residual value?

Mr. John Crowley: Your Honor, if Mr. Barnett wants to argue about it, I think we ought to have a side bar conference. Otherwise, I object to his——

The Court: Proceed, Mr. Barnett.

By Mr. Barnett:

Q. Senator, with respect to a portrait which is painted and used in a campaign, do you consider that to be a personal expenditure or a political expenditure?

Mr. John Crowley: Objection, your Honor.

The Court: Sustained.

By Mr. Barnett:

Q. Senator, are you familiar with the lodge that was built by Governor Stratton during 1958 on the Sangamon River near Springfield?

A. No, sir.

7600 Q. Well, do you know that he has such a building?

A. Yes, sir.

Q. And have you ever been invited there?

A. Yes, sir.

Q. And do you know the use to which the Governor has put that boat?

Mr. John Crowley: Your Honor, I will object.

The Court: Sustained. He said he has never been there.

Mr. Barnett: He may still know the use.

The Court: It would have to be hearsay, certainly, Mr. Barnett. It couldn't be firsthand knowledge. Sustained.

By Mr. Barnett:

Q. Are you acquainted, Senator, with a houseboat that Governor Stratton owned during the years that he was in office as governor?

A. I know as of conversation.

Q. And have you been invited there?

A. Yes, sir.

7601 Q. And do you know the use to which he put it?

Mr. John Crowley: Objection.

The Court: Same ruling. Sustained.

By Mr. Barnett:

Q. Senator, there has been testimony in this trial that Governor Stratton from time to time had meetings at the lodge with persons of official or political nature, that he had entertainments for people of that nature at the lodge from time to time, and that he entertained officials—or members of the State Supreme Court on his houseboat, and that he entertained other state officials, political leaders, and out of state people on his houseboat.

A. I so understand from reports.

Q. Now, Senator, with respect to expenditures to keep up and maintain such a place as the lodge, or to buy and maintain such a commodity as a houseboat, would you consider those to be political in nature, or personal?

Mr. John Crowley: I am going to object to that, your Honor.

The Court: This is a hypothetical question you are
7602 asking the Senator?

Mr. Barnett: Yes, your Honor.

The Court: Then you can't say "there has been evidence in this case." You have to say, "Assume the following things."

But let's correct that.

You assume, Senator, that there is a lodge, and that all these things which Mr. Barnett has referred to are among the hypotheses of your hypothetical question. And you are now being asked your opinion, assuming those, do you have an opinion as to whether or not the expenditures in connection with such an establishment are personal or political?

If I understand, that is the question.

Now, did you have an objection? On what grounds, Mr. Crowley?

Mr. John Crowley: Your Honor, I have an objection on the grounds that the hypothetical is not a complete
7603 statement of the evidence in this case in regard to——

The Court: I think that is right, but I think for purposes of a hypothetical, it is not required that it be a complete statement. You can augment the hypothetical on cross-examination and see whether that changes the witness's expert opinion.

I will overrule the objection, and the witness may answer the hypothetical question based on the hypothetical assumption.

By the Witness:

A. To make sure that the record is clear, assuming the existence of such a houseboat, and assuming the existence of such a lodge, they can very well be centers of political activity, and can have an extraordinary usefulness for purposes of political conferences, as well as official conferences involving the business of the state.

By Mr. Barnett:

Q. Is there any special consideration with respect to the boat, the houseboat?

7604 Mr. John Crowley: I will object. The Senator has answered the question.

The Court. Sustained. Sustained.

By Mr. Barnett:

Q. Now, Senator, do you know the Governor's wife, Shirley Stratton?

A. Quite well.

Q. And are you acquainted with her activities while the Governor was in office?

A. Reasonably so.

7605 Q. Will you tell us what you know of her activities?

A. She performed all the duties and functions and responsibilities that one would normally expect of the First Lady of the state. She toured with the Governor on so many, many occasions, which could involve, for instance, the dedication of a bridge, it might involve the dedication of a new state building, it might be in attendance on the Governors' conference, it could be a political mass meeting, it could be a financial rally, it could be any one of a hundred different kinds of affairs.

And Mrs. Stratton was so very, very frequently in attendance at those. And I might add, as a P. S., that she was an excellent campaigner.

Q. An excellent campaigner?

A. Excellent campaigner.

Q. Would you consider the apparel of a person in that position to be of a political expense?

Mr. John Crowley: I am going to object to that, your Honor.

7606 The Court: The wearing apparel of the wife of the Governor be a political expense? Overruled. I am going to let the Senator answer that.

By the Witness:

A. Well, if counsel don't mind, let me amplify the answer in this respect. I have said a thousand times that Mrs. Dirksen is the most important unsalaried member of my staff. And that was true of my daughter when she worked for me as a receptionist, but was never on the public payroll.

Now, when they render service of that kind, then what is your obligation and your responsibility? To make sure that they fit into the scheme of things, and that in their public appearances when they attend you, that they look the part, let us say, and that's notably true where you have these ceremonial occasions. In consequence, expenditures of that kind, I think, are a reasonable request for political character, for how else would you do it?

And if I may go a little further, let's assume that the Governors' Conference meets in Chicago and they are here for a week. The Governor's wife attends

7607 every luncheon and every dinner. Well, she is there in her official capacity, as well as in a social capacity. You know how it is with the ladies. If they appear at two functions in the same dress, then the next time around there ought to be a new gown.

And you can well go on the theory that that is a very proper expense, and, therefore, could be deductible.

Q. Senator, where a man who was not a candidate for office at the time is the beneficiary of a testimonial dinner in a non-campaign year, and let us say as a result $100,000 is available and is turned over to that office-

holder, would you consider this to be taxable income to the recipient?

Mr. John Crowley: Your Honor, I am going to object to that question. There is no evidence in the record here as to testimonial dinners. In fact, there is evidence to the contrary. In the defendant's statements, he said he never had a testimonial dinner.

7608 The Court: Sustained.

By Mr. Barnett:

Q. Senator, assume that no testimonial dinner has been given for a perennial candidate for office, but that a group of friends give him money in non-campaign years. Would you consider that to be taxable income to him?

Mr. John Crowley: I will object again, your Honor. There has been no testimony here that a group of friends gave the defendant any money in non-campaign years.

Mr. Barnett: Well, there have been several people who testified to that.

Mr. John Crowley: Now——

The Court: I am going to sustain the objection to the question, Mr. Barnett.

By Mr. Barnett:

Q. Now, Senator, where an individual candidate receives money from acquaintances of his or friends of his, either in a campaign year or outside of a campaign year, without the exchange of anything for value, do you con-

7609 sider that to be taxable income to the candidate?

Mr. John Crowley: Your Honor, I am going to object to the form of that question. I think it is improper. The Senator has already stated that he is not an expert, he does not consider himself to be an expert in the Internal Revenue Code——

The Court: No, I think this question is simply a repetition of a previous question, that is, whether contributions received by a political candidate or by an officeholder are taxable income. The Senator said no. There isn't any

argument about that. I think it is repetitious, and I will sustain the objection on the grounds that it is repetitious.

Mr. Barnett: No further questions, your Honor.

The Court: All right, we will recess briefly before we have the cross-examination.

(Brief recess.)

7610 **Cross-Examination.**

The Court: Mr. Crowley.

By Mr. John Crowley:

Q. Senator, do you have some water there?

A. Yes, sir. Thank you.

Q. Senator, you said on direct examination, I believe, that if a politician's wife purchased clothing to attend political functions, that it would be a deductible item.

A. Did I say attend political functions?

Q. Yes, to attend political functions.

A. I thought I said several.

Q. Senator, do you consider your wife's clothing to be a deductible item?

A. Let me put it in this frame: I think it is a matter of personal judgment in every case. In——

Q. Senator, do you deduct your wife's clothing?

Mr. Barnett: Your Honor, I object to interrupting the Senator's response.

The Witness: If counsel——

Mr. John Crowley: I am sorry. I didn't realize you

7611 had not finished your answer.

The Witness: If coursel would permit me——

Mr. John Crowley: Certainly, Senator.

By the Witness:

A. (Continuing) Let me lay a little foundation for the answer. I am a legislator, and I always have been. I have never regarded myself as a ceremonial officer except once, and that was when I was the Chairman of the District of Columbia Committee in the House of Representatives.

Since, of course, they have no government of their own, that makes you automatically the mayor, the unofficial mayor of Washington.

In that capacity I had to preside over a good many meetings and functions that came there. Now, the Governor is pretty much in the same position. I have always said that the mayor of a large city like Chicago and the Governor of the State are in cubicles that you have to set apart from probably any other public official. They have to be aboard. There comes a nurses' convention or
7612 a governors' convention, there comes a dedication of a building—it is just as numerous as the imagination will permit—and he is expected to be there. His First Lady is expected to be there. That is not true of me, and for that reason I do make that ceremonial distinction, and it would occur to me that under those circumstances that you, the people of the state who have a pride in their governor and a pride in the first lady, would expect her to make the best kind of an appearance, and so as a matter of personal judgment that may be the judgment as to whether it is a deductible expense or whether it can be taken out of a common fund.

7613 Mr. John Crowley: In all due respect to the Senator, I now move to strike the answer as not responsive to the question.

The Court: It may have been over-responsive, but I take it the answer, Senator, as far as your wife's clothes are concerned, is no, you do not consider them to be deductible expenditures for the reasons you have explained?

The Witness: If we put that on a purely personal ground and make it a matter of judgment in every case, depending on who the individual, who the officeholder is, then, of course, I would have no choice except to concur in having it stricken, but I trust it will be made a part of the record.

By Mr. John Crowley:

Q. Senator, in your function as a legislator and as

Minority Leader of the United States Senate, you are called upon to be present at many public ceremonies, are you not?

7614 A. Yes.

Q. Do you consider your own clothing to be a deductible expense?

Mr. Barnett: Object to that, your Honor.

The Court: Overruled.

Mr. Barnett: There is no testimony in this case that any deductions for clothing were taken against a return.

The Court: Overruled.

By the Witness:

A. I would assume you would have to particularize that question a little if I was to give you a responsive answer. If, for some reason, I was on a committee or a delegation that was in charge of a function, I would appear there in a ceremonial capacity. That might be one thing. But if I appear in just the normal capacity as a member of the United States Senate, regardless of whether I am the Minority Leader or not, the answer might well be no.

By Mr. John Crowley:

Q. Well, Senator, then when you say you appear in

7615 a formal capacity or ceremonial capacity, do you mean in a full dress tuxedo, white tie and tails, as distinguished from the ordinary business suit which you wear every day as United States Senator?

A. I am afraid I can give you no generalized answer to that, and for a reason, because functions at the White House are white tie affairs. They are not necessarily ceremonial. They are given only because of a visiting potentate. You are not exhibited to public view in the presense of large crowds. You have no particular interest in projecting an image or furthering a political ambition of some kind. And so a generalized answer, may I respectfully submit, is just a little difficult.

7616 Q. Senator, you have a home in Pekin, Illinois?

A. Yes, sir.

Q. And is that your ancestral home?

A. No, it is not.

Q. And did you build that home, sir?

A. No, sir.

Q. Did you purchase it while you were a Congressman or a United States Senator?

A. No, sir.

Q. It was there before then?

A. Yes, sir.

Q. And——

A. But you ought to follow up with your question, may I respectfully submit.

Q. Fine, Senator. It is your home?

A. Yes, and no. The home actually belongs to my mother-in-law. But it is our home no less, because she has been a widow for a long, long time.

Q. And, Senator, there was a program on television a few weeks ago, a tribute to you, and you were photographed at a home in Florida. Is that your property, Senator?

7617 A. May I respectfully submit, counsel, that belongs to Mrs. Dirksen.

Q. And, Senator, where do you live when you are in Washington, in performing your duties?

A. We have a home in Virginia roughly thirty miles from the Capital, better designated as Broad Run Farms, Virginia.

Q. And is that yours, Senator?

A. That is a joint venture between Mrs. Dirksen and myself.

Q. And, Senator, the home in Virginia or the home in Florida, you didn't pay for either of those homes with campaign funds, did you?

A. No, sir.

Mr. John Crowley: I have no further questions of Senator Dirksen.

The Court: Mr. Barnett, do you have any additional questions?

Redirect Examination,

By Mr. Barnett:

Q. Senator, several questions were asked you concerning the deductibility of clothing as distinguished
7618 from the purchase of clothing as a political expenditure. Who is to be the judge with respect to how political expenditures are to be made?

Mr. John Crowley: I will object to that question, your Honor.

The Court: Sustained.

7619 By Mr. Barnett:

Q. With respect to clothing which you buy or wear during a campaign, or even after a campaign, do you consider whether that is deductible or not on your return, that that would be a proper expenditure politically?

Mr. John Crowley: Objection. Leading.

By Mr. Barnett:

Q. Do you consider that to be a political or a personal expenditure?

Mr. John Crowley: Objection, leading.

It is the same——

By Mr. Barnett:

Q. What type of expenditure do you consider that to be?

The Court: You may answer that. That is not leading, although it has certainly been led up to.

By the Witness:

A. It would appear to me that in every case it is a matter of personal judgment. One person may do it, another person may not. I think it depends somewhat on

the type of office you hold or the type of office to
7620 which you aspire.

I thought I tried to make it clear that there is quite a difference between my status as a legislator in the national field as distinguished from the governor of a state. There are so many occasions when the Governor must appear in a ceremonial capacity and obviously in a state of ten and a half million people, the fourth largest state in the union, his people expect him to make the right kind of an appearance, and it then becomes a matter for his judgment to determine whether this is a normal and a very proper deductible expense, and whether it might well be paid out of contributions or gifts, rather than out of his own personal income.

By Mr. Barnett:

Q. Well, then, Senator, I judge from that that there is certain types of clothing which you would think would be a proper deduction on the return of an officeholder, that is, the expense of the clothing could be deducted as a business expense, is that correct?

Mr. John Crowley: I will object to the form of that
7621 question, your Honor. This is redirect examination, not cross-examination.

The Court: Sustained.

By Mr. Barnett:

Q. In the instances where a governor, for instance, deducted the cost of no clothing on his return, would you see any objection to his using political funds to purchase clothing?

Mr. John Crowley: I will object to that question, your Honor.

The Court: Sustained.

By Mr. Barnett:

Q. Would you consider clothing purchased with political funds, which is worn by a governor, and for which he has

claimed no deduction on his income tax return, as an official expense?

Mr. John Crowley: Objection.

Mr. Barnett: There is no deduction claimed to the return, your Honor.

The Court: Mr. Barnett, that is not the basis for the objection. Mr. Crowley's objection isn't that the question is inaccurate; it is that it is leading.

7622 And now he suggests a subject that suggests the answer.

It leaves Senator Dirksen with a yes or no alternative.

7623 By Mr. Barnett:

Q. Senator, in addition to the question of clothing, as a political expert, do you consider it advisable and politically expedient for a man in public life and who is constantly campaigning to belong to large numbers of organizations?

Mr. John Crowley: Your Honor, I am going to object to that. That is beyond the scope of the cross-examination, for one thing. I think it is still leading.

The Court: This now seeks an opinion with respect to political practice, but you are right, it is beyond the scope of the cross-examination.

Sustained, Mr. Barnett.

By Mr. Barnett:

Q. Senator, as a political expert, do you consider the purchase of clothing by a man that is frequently and constantly campaigning to be a personal or political expense?

A. It could well be a political expense.

7624 Q. Very good.

A. And I make, of course, this qualification: I try always to put the Governor in a rather unique position because of his relationship to the people of the state and his ceremonial capacity as distinguished from my capacity as a legislator.

It makes quite a lot of difference, I think.

Mr. Barnett: Thank you, Senator.

Mr. John Crowley: Senator, just one further question:

Recross-Examination.

By Mr. John Crowley:

Q. When you were, as it were, Mayor of the District of Columbia did you deduct the cost of your wife's and your daughter's clothing?

A. No.

Mr. Barnett: There is not a line of testimony in here that any clothing has been deducted.

Mr. John Crowley: I think in light of the redirect examination——

7625 Mr. Barnett: There is not a line of testimony that any clothing has been deducted and the returns do not reflect any clothing deductions.

The Court: Sustained.

The Witness: As a postscript to history, I could give you an answer.

Mr. John Crowley: I have no further questions on redirect.

The Court: Any further questions?

I have a question or two, Senator.

7626 By the Court:

Q. I have a question or two, Senator:

You discussed earlier two types of contributions which I understood you recognized as typically received by candidates or political leaders, politicians, one, campaign contributions and, two, general gifts, if I understood you correctly.

Is that right?

A. Yes.

Q. In your experience do you have contributions received which are of two different types?

A. Yes, I think so, and may it please the Court, let me illustrate for example: There are such committees as the National Senatorial Campaign Committee, which both parties maintain. A man may send a contribution to that committee that may be earmarked for me or for any other senator. There is no interdiction on it, no indication as to how it shall be spent.

So if that contribution does reach me I would feel free to spend it in any way that my personal judgment dictated.

7627 Now in addition to that you get contributions that come directly to you, intended, of course, for the campaign that happens to be at hand, so there is a little bit of distinction there, I am quite sure. However, I don't know that there is any particular prohibition on how you should spend either one of these contributions.

7628 Q. Well, you are aware, I am sure, of the Internal Revenue ruling—I think it is 54-80—which provides that a campaign contribution or political contribution which is applied to a personal use, and the example given is the payment of a portion of an indebtedness on a mortgage on a residence, a personal residence, constitutes the receipt of taxable income.

You are familiar with that?

A. Yes.

Q. Now, that would indicate that if something is received as a campaign contribution it is received with something of a restriction upon its use.

Is it your experience that you receive contributions which are properly classified as campaign contributions as distinguished from general gifts or unrestricted contributions?

A. Generally speaking they would come to you, of course—if they come in check form—written out to your order or to your campaign committee or as a campaign

expenditure or to the campaign fund. They can sometimes be made out just to you as an individual, with
7629 an accompanying letter to indicate the intention of the contribution.

Now, I think I should point out, and probably importantly so, because of the possibilities that this particular case may have on the future, that in 1944 I was confronted with that very problem because there were forty-one members of the House of Representatives who thought that I ought to be a candidate for the national ticket of my party.

Well, I was a bit of a tyro in that respect and I wanted to be sure that I wasn't getting on false ground.

I actually went to see the general counsel of the Internal Revenue Service and also the general counsel of the Treasury Department to ascertain exactly what would happen if contributions came to me as a candidate for the vice presidency of the United States, and then I wanted to know particularly if any funds were left over what the disposition of those funds would be.

At that time I did secure in letter form a ruling to
7630 the effect that I could spend those funds any way I saw fit, and even if I appropriated them unto myself and then disposed them to various charities, they might be regarded as income; however, they would regard them as contributions and therefore they would not be taxable as such.

Now, that, mind you, was in 1944 and antedates 54-80 by at least ten years.

The Bureau has spoken on that subject on a number of occasions and particularly when I was chairman of the senatorial campaign committee I had to give a good deal of attention to it and I had some consultations, not only with the Secretary of the Treasurer and the Commissioner

of Internal Revenue, but with the general counsel, both of the Treasury and the Bureau at the time.

7631 It did develop a ruling which I have pasted in the campaign ledger. I made copies of it to make sure that it would go to everybody in the Senate on our side of the aisle who would be a candidate, and as I remember now the import of that ruling was that when contributions came there would be no interdiction on their expenditure.

Now, it could well be that there has been a modification since that time, but my own judgment impels me to the belief, and I think to the conviction, that when these contributions come the candidate, of course, has to follow his best judgment as to what constitutes a political expenditure, and that could very well be membership in a lodge on the ground that he is going to meet people, it could very well be an expenditure for a piece of artistry, which in my case was done, I think, by the committee itself.

I have scrawled thousands of inscribed photographs that have gone to every section of the country. I didn't have to pay for it, but I used it. The committee did.

7632 If I am not out of character and I am not offensive in what I say, when this matter of the so-called houseboat came up, I don't know how many hundreds of times I have been on one of at least four different Government vessels on the Potomac, where the Secretary of State, the Secretary of the Army, the Secretary of the Navy, the President of the United States, would ask you to meet him at the dock at five o'clock along with other people. You would go down the Potomac. You would have some food, but you would be discussing official matters.

Now, you could well be discussing political matters, and so who shall make the judgment as to whether it is a political expenditure fully justified and deductible or whether it isn't deductible?

7633 Q. These are government vessels?

A. That is right. The government owns them. The Navy supplies the personnel for them and the whole thing is paid for out of the taxpayers' treasury.

Q. Let me ask you, Senator, have you ever used campaign contributions for the purpose of clothing or other personal expenditures?

A. If it pleases the Court, and if my answer is not offensive in that it is too long, I came so close to it on one occasion and it might have been a very substantial sum, but I went to Washington without a long-tailed coat and a white tie, and the first White House reception I attended, I had no such equipment.

I made inquiry. Some thought a black tie and tuxedo was sufficient. Others thought I should have a white tie and long-tailed coat. The result was I was photographed and it went all over the country that I appeared at the first Roosevelt reception in a rented dress suit.

It was a matter of frightful embarrassment, I must
7634 say, to the court, and promptly they took up a collection in Peoria. As I recall, they raised $2,700, and then I was in difficulty, because I finally had to say to them, divide the funds and give part of it to the Salvation Army, part to the Red Cross, part to the American Legion, part to other charities, and so I was left finally to buy my own formal wear.

I came that close to making a deduction, but at long last I didn't. However, I felt that I might have been justified in so doing in view of the harassment and the embarrassment that I suffered.

7635 Q. All right. That must have been some years ago because public acceptance of rental formal wear has risen since those days.

A. May I say to the Court it happened in 1933.

Q. If I understand your answer to my question, it is

that you have not used campaign funds for personal expenditures?

A. There could have been occasions.

Q. Yes.

A. When it might have been identified as a personal matter. I have obviously tried to be careful about it, but it is a matter of judgment, finally, depending on your duties, your responsibilities, your ceremonial character, and what you think you have to do as a representative abroad and among other states, administratively and ceremonially, ten and one-half million people, and it does make a lot of difference in my judgment.

The Court: Any further questions?

Mr. John Crowley: No, your Honor.

The Court: All right, Senator. Thank you. You may be excused.

The Witness: Thank you.

7636 (Witness excused.)

The Court: We will recess until two.

The Witness: Thank you, sir.

(Whereupon a recess was taken herein until 2:00 p. m. of the same day.)

In the
UNITED STATES DISTRICT COURT,
Northern District of Illinois,
Eastern Division.

UNITED STATES OF AMERICA vs. WILLIAM G. STRATTON.	64 CR 221.

Certificate.

I hereby certify that the foregoing typewritten pages, numbered consecutively from 7561 to 7636, inclusive, are

a full, true and accurate transcript of my original shorthand notes taken of the proceedings had in the above-entitled cause before the Honorable Hubert L. Will and a jury on March 5, 1965.

HELEN K. THOMAS,
Official Court Reporter, United States District Court, Northern District of Illinois.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 765

LESLIE E. JETT, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, having waived a jury trial, was found guilty by the district court on two counts of wilfully attempting to evade his income taxes (26 U.S.C. 7201), and on one count of subscribing a return which he knew to be false (26 U.S.C. 7206(1)). He was acquitted on two other counts charging the subscribing of false returns. The court imposed concurrent sentences of imprisonment for eighteen months on each of the three counts upon which petitioner was convicted. (R. 2a–5a, 81a–88a.) [1]

[1] The record is composed of the printed appendices filed by the parties in the court below. "R." references are to petitioner's appendix, and "Supp. R." references are to the government's appendix.

207-849—66

Petitioner was elected sheriff of Davidson County, Tennessee, in 1960 (Supp. R. 136b). The years here in question include 1960 and 1961. The two evasion counts were based on the net worth theory. The government presented evidence from which it could be concluded that petitioner had understated his taxable income by $7,963 in 1960, and $4,843 in 1961[2] (Pet. 25–26, 32–33; R. 90a–91a). The defense conceded that it had no explanation whatsoever for at least $1,500 of the unexplained 1961 increase in net worth (Supp. R. 202b, 210b–211b). The government showed two sources from which unreported income could have been derived—payoffs by law-violators and political contributions used to pay petitioner's personal expenditures. Regarding payoffs, there was evidence that illegal gambling and liquor establishments operated openly in petitioner's jurisdiction (Supp. R. 122b–123b, 134b, 142b, 155b); that petitioner sent his administrative assistant to demand $2,000 from one such law-violator (Supp. R. 123b–132b, 193b–201b); and that the operators of certain such establishments made payments to petitioner (Supp. R. 126b, 149b–156b, 159b–173b, 203b–204b).

Petitioner admitted that he had used contributions to his political campaign for personal living expenses (R. 50a–53a; Supp. R. 188b–191b), but testified that he had been advised by an attorney that political contributions were non-taxable (R. 53a–54a, 64a–67a,

[2] The government claimed an unexplained 1961 net worth bulge of $5,966.42, but the court of appeals found insufficient proof of a claimed personal expenditure for $1,123.30 (Pet. 28–29), thus reducing the 1961 bulge to $4,843.12.

70a–73a). There was evidence, however, that petitioner had not told the attorney that he was using the campaign funds for personal living expenses (R. 34a–38a; Supp. R. 182b–184b). There was also evidence that petitioner gave conflicting statements to the agents during their examination of his returns (Supp. R. 27b–42b, 132b–156b).

The false return count was based on the omission of a specific item of income from petitioner's 1961 return (R. 4a–5a). Ernest Jones, Jr., testified that he gave petitioner $500 in currency in late 1961 in order to retain his contract to supply gasoline to the sheriff's patrol (R. 20a–25a; Supp. R. 73b–75b).

Petitioner did not request special findings of fact (Supp. R. 210b). In rendering his general finding of guilty on the two net worth counts, the trial judge made it clear that he believed the government's evidence of payoffs, but did not mention the political contributions aspect of the case (R. 81a–86a). The district judge also accepted the evidence that the $500 payment by Jones in 1961 was not a bona fide gift, but was made in an effort to retain a business account (R. 85a).

The petition for certiorari ignores the evidence of payoffs and the 1961 payment by Jones. Instead, it focuses on the political contributions and argues (1) that receipts of this nature are not taxable income (Pet. 10–13), and (2) that, even if they are taxable, the evidence that petitioner wilfully failed to report them is insufficient and in some respects improper (Pet. 13–22). There is no necessity for the Court to

reach these questions, since the sentences on all three counts are concurrent and petitioner does not seriously challenge his conviction on the false return count involving the 1961 Jones payment.[3] *United States* v. *Gainey*, 380 U.S. 63, 65; *Hirabayashi* v. *United States*, 320 U.S. 81, 85. Moreover, the evidence of payoffs, which the trial judge accepted (R. 83a, 84a, 85a), provides a likely source for the net worth increases, regardless of the political contributions. In addition, as we will now show, petitioner's contentions regarding the political contributions are without merit:

1. Petitioner did not challenge the taxability of political contributions used to pay personal expenses in either of the courts below. At trial, his defense was that most of the funds used for living expenses came to him, not as political contributions, but as unrestricted gifts from personal friends, and that he was advised by an attorney that they did not repre-

[3] Petitioner implies (Pet. 5–7) that his conviction of the 1961 charge (R. 4a–5a) was inconsistent with his acquittal on the 1960 charge (R. 3a) involving similar payments. But petitioner was running for office in 1960, and the trial judge apparently believed that the payments in that year could have been intended as political contributions. The judge stated that the question as to 1960 was "very close" and since he had some "lingering doubts" he would resolve it "in favor of the defendant." (R. 84a). In 1961, on the contrary, there was no campaign and no evidence to indicate that the $500 payment by Jones in that year was a campaign contribution (R. 85a).

sent taxable income[4] (R. 52a–54a, 70a–72a; Supp. R. 145b). Petitioner conceded that after the Internal Revenue Service began its investigation and he obtained other counsel, he reported such receipts as income in his 1962 return (R. 54a, 66a–67a; Supp. R. 34b, 39b). Both in the trial court (R. 76a–81a; Supp. R. 145b) and in the court of appeals (Pet. 29–31) it was recognized that the real issue was whether petitioner had wilfully omitted taxable income from his returns.

Even if the issue of taxability were presented by this record, there is no confusion in the present state of the law on the subject. As the court of appeals pointed out (Pet. 30–31), the Internal Revenue Service had ruled long before petitioner received the payments here in question that political contributions are taxable to the extent used to pay personal expenses. Rev. Rul. 54–80, 1954–1 Cum. Bull. 11. This ruling had been upheld by the Fourth Circuit in *O'Dwyer* v. *Commissioner*, 266 F. 2d 575, certiorari denied, 361 U.S. 862, and there is no decision to the contrary.

The government called as witnesses many of the people who gave money to petitioner during his politi-

[4] The government showed, on the other hand, that most of the donors felt they were making political contributions (Supp. R. 42b–58b, 65b–85b), and that petitioner did not tell his attorney that he was using the political contributions for personal rather than campaign expenses. (R. 34a–38a; Supp. R. 40b–42b, 182b–184b). The trial court resolved the conflict against petitioner.

cal campaign and their testimony demonstrates that they intended the money to be used for political rather than personal purposes (Supp. R. 46b, 47b, 49b, 51b, 52b, 54b, 55b, 58b, 66b, 68b, 71b). To whatever extent the trial judge relied upon diverted political contributions as proving a part of the unexplained net worth increases, it is clear that he found that the contributions were not unrestricted gifts but rather were intended to be used for political purposes. This type of factual judgment has traditionally been left to the trier of fact subject only to appellate review for substantial evidence. See, *e.g.*, *Commissioner* v. *Duberstein*, 363 U.S. 278.

2. The evidence of wilfulness was clearly sufficient. Petitioner's returns omitted taxable income of approximately $8,000 and $5,000 for 1960 and 1961, respectively (see *supra*, p. 2); there was evidence that at least some of this was derived from graft (Supp. R. 124b–127b, 149b–154b, 209b); petitioner paid his bills in cash, maintained no checking account, and kept no records of his political campaign funds (Supp. R. 29b, 136b, 191b); and his explanations during the investigation and at the trial were evasive and contradictory (R. 43a–45a; Supp. R. 12b–15b, 27b–42b, 132b–155b, 182b, 193b–201b). The government's use of petitioner's contradictory statements to the agents during the investigation (see Pet. 18–20) was obviously proper, since they were designed to conceal the offense charged in the indictment. It is not necessary for the prosecution to corroborate such statements (Pet. 14–17), since it was attempting to demonstrate that they were untrue.

Petitioner's reliance (Pet. 13–14) on *James* v. *United States,* 366 U.S. 213—which he concedes would affect only the 1960 evasion count—is misplaced. In 1946 this Court in *Commissioner* v. *Wilcox,* 327 U.S. 404, held that the proceeds of embezzlement were not taxable income. In *James* the Court overruled *Wilcox* but held that since the taxpayer in that case "might have relied on" *Wilcox* (366 U.S. at 221), he could not have intended to evade his income tax on the embezzled money. There are two reasons why petitioner could not reasonably have relied on *Wilcox* as exempting his diverted political contributions from income tax. First, the *Wilcox* holding was explicitly based on the now repudiated theory that the taxpayer had "at all times an unqualified duty and obligation to repay the [embezzled] money to his employer" (p. 408). This reasoning is not, however, applicable to the instant case; petitioner has shown no obligation under State law to repay political contributions which are used to pay personal expenses. Second, even if State law did create such an obligation, petitioner would not come within the scope of the *Wilcox-James* rule. At least 9 years before petitioner first failed to report diverted political contributions as income, this Court had limited *Wilcox* "to its facts" by distinguishing between embezzlement and extortion. *Rutkin* v. *United States,* 343 U.S. 130, 138. Thereafter the lower courts applied *Wilcox* only in cases of classic embezzlement. See *James* v. *United States,* 366 U.S. at 217. In light of the unequivocal state of the law concerning the taxability of political contri-

butions diverted to personal use at the time of petitioner's acts (see Rev. Rul. 54–80, *supra; O'Dwyer* v. *Commissioner, supra*) and the manifest differences between embezzlement and the personal use of political contributions, petitioner is not the type of taxpayer "who might have relied on" *Wilcox. James* v. *United States,* 366 U.S. at 221.

Finally, petitioner's contention that the lower courts have impaired the defense of reliance upon advice of counsel (Pet. 20–22) ignores a conflict in the testimony. Petitioner testified that he had informed the attorney that he had used political contributions for living expenses (R. 53a, 70a). The attorney denied this (R. 38a), and, as the court of appeals observed (Pet. 29), the trial court was well within its province in resolving the conflict against petitioner.

The petition for a writ of certiorari should be denied.

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FEBRUARY, 1966.

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IN THE

SUPREME COURT OF THE UNITED STATES

LESLIE E. JETT,

Petitioner,

VS.

UNITED STATE OF AMERICA

Respondent.

SUPPLEMENTAL MEMORANDUM OF PETITIONER

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IN THE SUPREME COURT OF THE UNITED STATES

No._____

LESLIE E. JETT,

Petitioner

VS.

UNITED STATES OF AMERICA,

Respondent

SUPPLEMENTAL MEMORANDUM OF PETITIONER

Instead of directly meeting the arguments advanced in our petition, the Government's memorandum primarily seeks to undercut these arguments by asserting that they are not raised by the record and, hence, that "there is no necessity for the Court to reach" them. (e.g. Res. 3-4). A complete reply to this assertion would require a repetition of virtually the entire statement of facts and argument contained in the original petition, and will not be undertaken. There is, however, one statement in the Government's memorandum which is simply inaccurate, and which should be corrected. On page 4 of its memorandum, the Government asserts:

> The evidence of payoffs, *which the trial judge accepted* (R. 83a, 84a, 85a) provides a likely source for the net worth increases regardless of the political contributions. (Res. 4). (Emphasis added)

As a matter of law, Government counsel realizes, of course, that the existence of a *known* source (i.e. campaign contributions) eliminates reliance upon a

likely source (i.e. illegal payoffs); but aside from this self-evident legal proposition, it is just not true, as a matter of fact, that "the trial judge accepted" "the Government's evidence of payoffs." In the very portion of the record cited by the Government in support of its assertion, the judge expressly stated that he did not find that the defendant accepted payoffs:

> Count two, which is a specific item count, has given me quite a bit of concern. It has injected into the picture a prominent family in town for whom I have the greatest respect as I know everybody does, and it involves charges against the defendant of the utmost seriousness. One could hardly imagine a graver charge than this count entails. It includes the Ernest Jones $500 item for the year 1960, the Shelton $1,000 item, the Abernathy item of $400, and the Bridgeforth item of $400. This count, after I consider every possible angle and aspect of it, leaves me with what I would have to describe as a reasonable doubt in my mind. I think there is evidence both ways on the proposition.
>
> R. 84a. See also, the colloquy between the Court and Mr. Hooker which appears on page 75a of the appendix.

We think it very important that the Court not be misled on this crucial point.

Respectfully submitted,

_____

_____

_____

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